



**A Pilot Assessment of the Office of the Public Defender
for Santa Clara County, California (San Jose)**

December 2003

The National Legal Aid & Defender Association
1140 Connecticut Avenue, NW, Suite 900
Washington, DC 20036

Table of Contents

CHAPTER I: Introduction.....	1
The Constitutional Right to Counsel in Criminal Cases.....	1
Meeting Gideon’s Promise: Measuring the Adequacy of Indigent Defense Services.....	1
A New Direction for Indigent Defense Evaluations.....	2
The Current Study.....	4
Acknowledgements.....	5
CHAPTER II: American Bar Association’s <i>Ten Principles</i>.....	6
Independence.....	6
Establishment of a Public Defender Office, Involvement of the Private Bar & State Funding.....	10
Client Eligibility.....	13
Confidential Meeting Space.....	15
Workload.....	15
Attorney Qualifications.....	25
Continuity of Representation.....	26
Resource Parity.....	28
Continuing Legal Education & Training.....	29
Attorney Performance.....	30
CHAPTER III: Best Practices.....	33
Cost-Effectiveness.....	33
Innovation.....	33
Office Environment.....	35
Community Relations.....	35
Technology.....	36
CHAPTER IV: Conclusion.....	38
Appendix A: Evaluation Protocol.....	i
Appendix B: Staff Survey Analysis.....	xiii

Chapter I Introduction

The Constitutional Right to Counsel in Criminal Cases

In the landmark decision *Gideon v. Wainwright*, 372 U.S. 335 (1963), the U.S. Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him,” in establishing that the right to counsel is a fundamental part of due process. Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court determined that our government is responsible for providing an appropriate public defense system that honors this basic right in determining that states must provide counsel to indigent defendants in felony cases. That mandate has been consistently extended to any case that may result in a potential loss of liberty.¹

Meeting Gideon’s Promise: Measuring the Adequacy of Indigent Defense Services

Recognizing that effective public policy depends upon effective implementation and enforcement, The National Legal Aid and Defender Association (NLADA)² has played a leadership role in both the development of national standards for public defense systems³ and processes for evaluating a jurisdiction’s compliance against them. While NLADA’s standards are non-binding on state or local programs, they do serve as a model for enacting jurisdiction-specific standards, many of which are binding and enforceable by virtue of statutory codification, promulgation of a state supreme court rule, adoption/citation in a state supreme court opinion, as a condition to receive state financial support, or adoption by a state indigent defense oversight commission or public defense agency.⁴

¹ *Gideon* established the right to counsel for felony trials. Subsequent cases extend that right to: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving a suspended sentence – *Shelton v. Alabama*, 535 U.S. 654 (2002).

² Created in 1911, NLADA’s mission is to promote equal justice by supporting competent civil and defender legal services. Current initiatives include the American Council of Chief Defenders (ACCD), a leadership forum that brings together the top defender executives nationwide, and the National Defender Leadership Institute (NDLI), an innovative project to train current managers and develop future leaders.

³ Guidelines for Legal Defense Systems in the United States (National Study Commission on Defense Services, U.S. Department of Justice, 1976); The Ten Principles of a Public Defense Delivery System (adopted by the ABA, 2002) Standard for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989), Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994).

⁴ Such standards were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000. www.ojp.usdoj.gov/indigentdefense/compendium/.

Standards allow objective measurement of an individual organization's mechanisms for effectuating key requirements of an indigent defense system, such as independence, accountability, training, supervision, effective management, fiscal controls, competent representation, and workload. NLADA's leadership on promoting consistent, quality representation through indigent defense standards was recognized in February 2002, when the American Bar Association (ABA) adopted a set of ten principles which "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney."⁵ The purpose of the *Ten Principles* is to distill the existing voluminous national standards for indigent defense systems (as opposed to individual attorney performance⁶) down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply to ensure the adequacy of indigent defense services.

A New Direction for Indigent Defense Evaluations

In recent years, national criminal justice organizations (including NLADA) have focused their research and technical assistance capabilities on addressing the needs of indigent defense systems in crisis. Such standards-based evaluations often detail the effect inadequate funding has on the cost-effectiveness, efficiency and quality of the representation afforded poor people in the jurisdiction. Recommendations in these assessments often focus on bringing the indigent defense system up to a minimum compliance level with recognized national standards. Though time-consuming and relatively expensive, these projects have proven effective over time at educating funding-agents and other policymakers and bringing sustained improvement to jurisdictions across the country.⁷

The limited capacity of national indigent defense technical assistance programs is not sufficient even to meet the need of the number of systems that are in crisis in any given year. Moreover, the limited technical assistance capacity has meant that managers of indigent defense systems that are not currently experiencing a crisis largely are left to attempt to critically evaluate and improve their own programs without the knowledge and experience of national experts.⁸ Accordingly, NLADA began work in the winter of 2002

⁵ The *Ten Principles of an Indigent Defense System* is based on a paper by James Neuhard, State Appellate Defender of Michigan and former NLADA President and H. Scott Wallace, NLADA Director of Defender Legal Services, which was published in December 2000 in the *Compendium of Standards for Indigent Defense Systems* (www.ojp.usdoj.gov/indigentdefense/compendium/).

⁶ Requirements for individual attorney performance are comprehensively addressed in other NLADA and ABA standards. See NLADA Performance Guidelines and ABA Defense Function Standards, *supra* note 9.

⁷ In evaluating an indigent defense system, NLADA has traditionally put together a site-visit team of leading public defense practitioners and professional researchers to: assess the practice of an office against nationally recognized indigent defense standards; assist public defender management formulate jurisdictional-specific standards; and, help the public defender management team institutionalize recommendations. NLADA is uniquely situated to perform this task. The American Council of Chief Defenders (ACCD) is a section of NLADA dedicated to supporting leaders of all types of indigent defense systems through the open exchange of information and ideas. Through the ACCD, NLADA has a standing commitment from some of the best national public defender leaders to assist in site assessments.

⁸ Objective outside assessments of any indigent defense program, even one that is not in crisis, are useful for improving program operations and ensuring accountability. Such assessments can assist directors advocate for their programs by providing funding agents, policymakers and the public with the information they need to determine whether this constitutionally mandated responsibility is being discharged effectively, and with empirical criteria to gauge whether

to develop a new assessment methodology that would help such programs incorporate national standards and improve program performance while providing some access to national expertise. In devising the new assessment methodology, NLADA set three criteria to be met:

1. Since part of what makes programs effective is a willingness to continually evaluate and make improvements on the way in which the indigent defense services are delivered and managed, the new methodology must give indigent defense managers the necessary tools to self-evaluate and monitor their programs' successes and weaknesses on an on-going basis;
2. Site protocols and survey instruments must be uniformed such that programs in different regions of the country can be compared despite jurisdictional differences in law and practice;
3. The assessment should require a more limited investment of national resources resulting in a lower cost that would make the services obtainable for a greater number of programs.

The resulting NLADA evaluation protocol was based on the successful accreditation models use in such diverse industries as health-care and corrections (emphasizing self-assessments and objective validation).⁹ In conducting its traditional standards-based site assessments, NLADA always conducted an initial site visit to gather quantitative statistics, meet with senior management about assessment goals and objectives, and conduct staff surveys.¹⁰ Under the new evaluation methodology, NLADA developed a self-assessment form to take the place of this initial site visit. This form covers a number of critical areas of public defense including questions related to: training, management, supervision, technology, budget management, community relations, and performance.

Indigent defense managers desiring to undergo the new evaluation services will be asked to fill out the self-assessment form and return it to NLADA with copies of indigent defense caseload statistics, other requested data, and policy manuals.¹¹ Unlike the traditional standards-based evaluation process in which an NLADA/“ACCD” (American Council of Chief Defenders) site team utilizes a combination of in-court observations and one-on-one interviews with staff and key criminal justice representatives, site visits under

and what changes should be made in program operations. . Even more successful programs regularly have to educate new County Commissioners and/or state legislators about the importance of the indigent defense organization to the overall health of the jurisdiction's criminal justice system and the corresponding necessity of maintaining an adequate-level of funding. Finally, documented examples of well-managed and innovative programs can serve as models nationwide for those systems struggling to provide better services.

⁹ See Appendix A for evaluation protocol.

¹⁰ NLADA team members utilize a modified version of the Pieczenik Evaluation Design for Public Defender Offices, which has been used since 1976 by NLADA and other organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance Project of the American University Justice Programs Office.

¹¹ One of the many benefits of such a system is that the new pilot evaluation methodology allows programs to gauge their own compliance with national indigent defense standards and guidelines. The new assessment program could potentially lead to a voluntary accreditation system in the future.

the new pilot evaluation system consists of a two or three-person assessment team to review the materials submitted and verify the accuracy of the responses.

The Current Study

Before making the new evaluation system widely available to the field, NLADA desired to test the design in several jurisdictions across the country. Contemporaneously, Jose Villarreal, Public Defender for Santa Clara County, California (San Jose) requested NLADA to conduct an evaluation of his office.¹² NLADA and OPD agreed to use the office as a pilot assessment program for a number of reasons, including OPD's reputation as a well-run public defender program and the fact that OPD had limited resources to devote to evaluation services.

In January 2003, NLADA conducted its validation site visit and administered a 75-questions staff survey.¹³ The site team consisted of NLADA Vice-President & Chief Counsel Jo-Ann Wallace,¹⁴ NLADA Director of Research & Evaluations for the Defender Division David J. Carroll,¹⁵ and NLADA consultant David Meyer.¹⁶

¹² In light of the then recent *Gideon* decision, and at the request of the Santa Clara County Bar Association, the Santa Clara Board of Supervisors ("Board of Supervisors") established the Office of the Public Defender (OPD) in 1964. [See: Santa Clara County Ordinance Code, Section A2-51; California Government Code, Section 27706]. The office officially opened its doors on April 1, 1965. (*FY 2002 Annual Report, Office of the Public Defender, October 2002*.) To meet the demand of an escalating caseload, OPD has grown over its nearly 40-year history to its current size of 230 employees, including 120 attorneys, 30 investigators, 30 paralegals and 45 clerical and support staff. Additionally, the Board of Supervisors authorized the creation of the Alternate Defender Office (ADO) in 1996 to handle cases in which OPD had a conflict of interest (such as occurs with multiple defendants). The OPD chief executive oversees ADO operations for administrative and budget purposes only. The Alternate Defender Office also handles primary representation of all indigent criminal clients in the Palo Alto Court facility (North Santa Clara County). Ethical screens are in place (including separate physical locations) to ensure that substantive information on cases is not transferred between OPD and ADO staff. Legal Aid attorneys handle tertiary conflicts. Legal Aid is a coordinated assigned counsel system overseen by a county administrator that also handles all contempt matters arising in the Family Courts of the County.

¹³ See Appendix B for results.

¹⁴ At the time of the site visit, Jo-Ann Wallace was Vice President and Chief Counsel for Defender Operations of NLADA. From June 1994–February 2000 she was the Director of the Public Defender Service for the District of Columbia. Before becoming the Director, she was the Deputy Chief of the Appellate Division. She previously served the agency as the Coordinator of the Juvenile Services Program. Ms. Wallace has extensive experience as a lecturer on criminal justice topics. She has served as a visiting faculty member for Harvard Law School's Trial Advocacy Workshop and has been a regular faculty member of the District of Columbia Criminal Practice Institute, the District of Columbia Delinquency and Neglect Practice Institute, NLADA's Appellate Defender Training and Leadership and Management Training. Ms. Wallace has been working on national indigent defense issues for almost a decade, including serving as Chairperson for the Blue Ribbon Commission on Indigent Defense, a joint NLADA/United States Department of Justice project, serving as a lead consultant for the Department of Justice Symposium on Indigent Defense and conducting research and evaluations on indigent defense systems. Ms. Wallace currently is NLADA's Senior Vice President for Programs.

¹⁵ David Carroll joined NLADA as Director of Research & Evaluations for the Defender Services Department in January 2002. Since joining NLADA, Mr. Carroll was Project Director on a standards-based assessment of indigent defense services in Venango County (Franklin), PA and co-authored a report for the U.S. Department of Justice, National Institute of Justice on the impact of standards on indigent defense services nationwide. For the past five and a half years, Mr. Carroll worked as a Senior Research Associate for the Spangenberg Group (TSG) a national and international research and consulting firm specializing in criminal justice reform. Mr. Carroll directed numerous projects on behalf of TSG, including: a jail-planning study for Pierce County (Tacoma) Washington; a study of indigent defense cost recovery efforts in Jefferson and Fayette Counties, Kentucky (Louisville and Lexington); and a statewide assessment of West Virginia's Public Defender Services. Mr. Carroll also was chosen to provide on-site technical assistance to statewide Task Forces in Illinois, Nevada, Alabama, and Vermont under the auspices of the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance.

Acknowledgements

The decision to test the new assessment methodology in several locations before utilizing it more broadly was premised on an assumption that unanticipated issues would be surfaced during the course of the application of the methodology that could then be addressed appropriately before finalizing the processes. As anticipated, several such issues did arise. One important question that had to be considered was: since national standards address systemic issues involving all providers of indigent defense services in a jurisdiction, is it feasible to assess only one component of an indigent defense system (e.g., OPD) against those standards? In this instance, the assessment was requested solely by the OPD management (instead of an entity with broader control over the criminal justice system) and the scope of the report was clearly focused on an individual program. Thus we resolved the issue by evaluating OPD against only those standards over which the management exercises control. The report does, however, point out where the system as a whole fails to comply, and does provide information that may prove useful in the event that the broader systemic issues are tackled in the future. A separate issue arose regarding the scope and breadth of the final report. Since the evaluation methodology envisioned a process that would put much of the assessment responsibility on the program itself, a concise 15-page validation report was envisioned as the end product. The site team ultimately settled on a more in-depth analysis in order to provide background and context to make the report as useful as possible to OPD as well as allow other jurisdictions to learn from the OPD experience.

NLADA gratefully acknowledges Public Defender Jose Villarreal and Chief Assistant Public Defender David Mann for their diligence in working on the self-assessment and providing requested information, as well as for their patience in allowing resolution of the important issues that surfaced before delivery of the final report. We applaud their willingness to put their program under a national microscope voluntarily in their on-going efforts to make a good program better, and to work with us to develop assessment processes that can be more widely available to indigent defense programs nationwide. NLADA also recognizes Ms. Nancy Brewer for her invaluable assistance in arranging the various components of the site visit.

¹⁶ David Meyer is a nationally recognized expert in organizational management, who has served on the Malcolm Baldrige National Quality Award Board of Examiners. Mr. Meyer currently is the Chief Deputy Director for the Los Angeles County Department of Mental Health, after a more than twenty-year career with the Los Angeles County Public Defender Office (LACPDO). From 1971 to 1993, Mr. Meyer served in several capacities, including acting head of the organization, Chief Deputy, Head of the Mental Health Division and Head of the Juvenile Unit. Mr. Meyer frequently lectures on organizational management and has participated in several NLADA site assessments (most recently in Riverside County and San Bernardino County, CA) in addition to private consulting services provided to defender organizations nationwide.

Chapter II American Bar Association's *Ten Principles*

This Chapter evaluates OPD in light of the American Bar Association's *Ten Principles*. Each of the sections below will present an ABA principle with a brief explanation of its importance. This will then be followed by an assessment of OPD against that standard. Each section will conclude with a recommendation to improve upon the principle's implementation, where appropriate.

1. Independence

The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense representation. As stated in the Office of Justice Programs Report, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense* ("Improving Criminal Justice"): "The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks."¹⁷ Courts should have no greater oversight role over lawyers for indigent defendants than they do for paying clients. The report states: oversight should be "by an independent board or commission, rather than directly by judicial, legislative or executive agencies or officials." Noting that prosecutors and privately retained counsel in the United States are independent, the National Study Commission on Defense Services concluded in 1976 that: "The mediator between two adversaries cannot be permitted to make policy for one of the adversaries."¹⁸

The ABA Principle provides that:

*The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.*¹⁹

National standards address the need for independence in the context of all three basic models for delivering indigent defense services in the United States. Where private lawyers are assigned, the concern is with unilateral judicial power to select lawyers to be

¹⁷ NCJ 181344, February 1999, at x.

¹⁸ NSC Report, at 220, citing National Advisory Commission on criminal Justice Standards and Goals (1973), commentary to Standard 13.9.

¹⁹ Annotations and footnotes omitted throughout.

appointed to individual cases, and to reduce or deny the lawyer's compensation. Where contracts with nonprofit public defense organizations or law offices are used, the concern focuses primarily on flat-fee contracts which pay a single lump sum for a block of cases regardless of how much work the attorney does, creating a direct financial conflict of interest with the client, in the sense that work or services beyond the bare minimum effectively reduces the attorney's take-home compensation. Where a public defender system is used, the concern is with vesting the power to hire and fire the chief public defender in a single government official, such as the jurisdiction's chief executive or chief judge, a concern compounded when that official must run for popular election.²⁰

ASSESSMENT: The makeup of the structure pursuant to which Santa Clara's chief public defender is hired or fired is not within the control of OPD and thus it would be inappropriate to assess the program's compliance with this first ABA Principle. The following assessment is provided for informational purposes.

The ordinances establishing OPD do not contain explicit language establishing the independence of the Public Defender. In Santa Clara County, the Public Defender is appointed by the Board of Supervisors, serves at the pleasure of the Board, and reports directly to the Board (unlike most county department heads who report to the County Executive and, through him, to the Board).²¹ This protocol eliminates concerns over inappropriate judicial oversight or having the chief defender serve at the will of a single individual. It also provides the practical advantage of assuring the Public Defender direct access to the Board with regard to budgetary and other issues. Although there are no written standards that protect the independence of the Public Defender, per se, the existing selection and reporting system has apparently worked well in practice to protect the Public Defender from undue influence.

Having said that, the Public Defender's independence is conditioned on the professional, respectful and trusting relationship that exists between the current Board members and Public Defender rather than on built-in systemic mechanisms that protect the agency's independence. Should there be a turnover in the Board, and the new members not have the understanding of the constitutional obligations under which the OPD functions, that independence may be jeopardized.

On the second prong of ABA Principle #1, OPD does encourage diversity in the hiring process by participating in job fairs where people of diverse backgrounds are actively encouraged to apply and by factoring the demographic characteristics of their clients into other aspects of their hiring process. The Office of the Public Defender was awarded the County Executive's *Unity in Diversity Achievement Award* in May of 2000. At that time, less than 15% of the lawyers in California were Black, Hispanic or Asian, while 35% of the lawyers in the Public Defender's Office were minorities and 45% of the lawyers were women. Consistent with studies on the benefits of diversity, the OPD management believes that the diversity of the staff enables them to provide more meaningful and effective representation to their clients.

²⁰ The National Study Commission on Defense Services in 1976 expressed concern with the cost, distraction, and counterproductiveness of allowing the intrusion of electoral politics into a governmental function that should be focused exclusively on criminal law and administration. *Id.* at 217.

²¹ Supervisors are elected on a non-partisan basis and serve four-year terms.

RECOMMENDATION: To prevent any immediate infringement on the independence of the OPD chief executive, the Board should consider an employment contract for the Public Defender that explicitly limits removal of the chief defender except for cause such as malfeasance.

For the long term, an independent board to oversee the indigent defense services should be considered. NLADA has promulgated guidelines to assist jurisdictions in establishing independent oversight boards. NLADA's *Guidelines for Legal Defense Services* (Guideline 2.10) states:

A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

- a. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.
- b. No single branch of government should have a majority of votes on the Commission.
- c. Organizations concerned with the problems of the client community should be represented on the Commission.
- d. A majority of the Commission should consist of practicing attorneys.
- e. The Commission should not include judges, prosecutors, or law enforcement officials.
- f. Members of the Commission should serve staggered terms in order to ensure continuity and avoid upheaval.²²

²² Statutory language creating the North Carolina Commission on Indigent Defense Services is included below as an example of how such a commission functions in practice. The North Carolina Commission is an autonomous body within the judicial branch of government for fiscal and budgetary purposes only. Please note that they do not comply with the guideline excluding members of the judiciary from the board, but they do explicitly prevent prosecutors and law enforcement officials from being board members:

Chapter IX, § 7A-498.4

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

1. The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary.
2. The Governor shall appoint one member, who shall be a non-attorney.
3. The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the President Pro Tempore of the Senate.
4. The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the Speaker of the House of Representatives.
5. The North Carolina Public Defenders Association shall appoint member, who shall be an attorney.
6. The North Carolina State Bar shall appoint one member, who shall be an attorney.

NLADA guidelines also establish the duties of independent commissions. Under Guideline 2.11, the primary function of the Indigent Defense Commission should be to select the State (or County) Defender Director. The Chief Public Defender should only be removed for just cause.²³ Guideline 2.11 further delineates the duties of an Indigent Defense Commission:

The Commission should also:

- a. Assist the State (or County) Defender Director in drawing up procedures for the selection of Assistants or Deputies;
- b. Receive possible client complaints, initiate statistical studies of case disposition, and monitor the performance of the Defender Director;
- c. Maintain a continuing dialogue with the State (or County) Defender Director in order to provide input and advice;
- d. Assist in ensuring the independence of the defender system by serving as a buffer and educating the public regarding constitutional requirements and the functions of the defenders;
- e. Serve as liaison between the legislature and the defender system upon request of the Defender Director; and,
- f. Remove the Defender Director from office in the event that good cause is shown.

The Commission should not interfere with the discretion, judgment and zealous advocacy of defender attorneys in specific cases. The Commission should meet on a regular basis and should be presided over by a chairperson elected by its members. The Commission should serve without pay, and should be

-
7. The North Carolina Bar Association shall appoint one member, who shall be an attorney.
 8. The North Carolina Academy of Trial Lawyers shall appoint one member, who shall be an attorney.
 9. The North Carolina Association of Black Lawyers shall appoint one member, who shall be an attorney.
 10. The North Carolina Association of Women Lawyers shall appoint one member, who shall be an attorney.
 11. The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a non-attorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American.

The North Carolina statute has additional experiential requirements to ensure appropriate exercise of the indigent defense function within the criminal justice system:

(d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section.

²³ Guideline 2.12, Qualifications of Defender Director and Conditions of Employment: “The Defender Director should be a member of the bar of the state in which he is to serve. He should be selected on the basis of a non-partisan, merit procedure that ensures the selection of a person with the best available administrative and legal talent, regardless of political party affiliation, contributions, or other irrelevant criteria.

“The Defender Director’s term of office should be from four to six years in duration and should be subject to renewal. The director should not be removed from office in the course of a term without a hearing procedure at which good cause is shown.”

reimbursed for travel and other reasonable expenditures incurred as a result of membership.

A majority of commission members should constitute a quorum, and any resolution, policy adoption, or motion should require a vote of a majority of those present. However, selection of the Defender Director should require the vote of each member due to the importance of that decision. Voting by proxy should be prohibited.²⁴

2. Establishment of a Public Defender Office, Involvement of the Private Bar & State Funding

The second of the *ABA Ten Principles* supports both the establishment of an institutional defender program and the active participation of the private bar in jurisdictions with high enough caseloads. The principle also reiterates the need for state funding:

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office²⁵ and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services. The

²⁴ More and more states have also delegated to Indigent Defense Commissions the duty of promulgating standards to govern the delivery of criminal defense services to people of insufficient means. Again, North Carolina will serve as an example: § 7A-498.5. Responsibilities of Commission:

- a. The Commission shall have as its principal purpose the development and improvement of programs by which the Office of Indigent Defense Services provides legal representation to indigent persons....
- c. The Commission shall develop standards governing the provision of services under this Article. The standards shall include:
 1. Standards for maintaining and operating regional and district public defender offices and appellate defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;
 2. Standards prescribing minimum experience, training, and other qualifications for appointed counsel;
 3. Standards for public defender and appointed counsel caseloads;
 4. Standards for the performance of public defenders and appointed counsel;
 5. Standards for the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts;
 6. Standards for providing and compensating experts and others who provide services related to legal representation;
 7. Standards for qualifications and performance in capital cases, consistent with any rules adopted by the Supreme Court; and,
 8. Standards for determining indigency and for assessing and collecting the costs of legal representation and related services.

The Commission shall determine the methods for delivering legal services to indigent persons eligible for legal representation under this Article and shall establish in each district or combination of districts a system of appointed counsel, contract counsel, public defender offices, appellate defender services, and other methods for delivering counsel services, or any combination of these services.

²⁵ NAC, Standard 13.5; ABA, Standard 5-1.2; ABA Counsel for Private Parties, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

Several reports have concluded that public defender offices provide efficient and cost effective representation in jurisdictions with sufficient caseload due to a number of factors, including: familiarity with criminal law; specialization for certain types of cases; and, centralization of administrative costs.²⁶ At the same time, ABA Principle 2 recognizes the benefit of maintaining private bar involvement, especially in regard to innovation.

But in establishing how to involve the private bar, Principle 2 calls for coordinated assigned counsel plans with policies and procedures that are explicitly spelled out. For instance, appointments should be made from lists of attorneys categorized according to experience, training and capability, matched to categories of cases of corresponding complexity, rather than being left up to the trial judges' individual discretion. The relevant guidelines call for such responsibilities to be carried out by a full-time administrator with experience in indigent defense.²⁷

The second part of ABA Principle 2 explicitly calls for state funding and oversight of indigent defense services as mandated by *Gideon*. Leaving counties responsible for administering and funding their criminal justice systems, and in particular indigent defense services, can put an undue hardship on local jurisdictions to ensure adequate representation of poor people accused with crimes. Nationally, counties with fewer sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing. For instance, crime rates tend to increase when there is a high level of unemployment.²⁸

²⁶ See: West Virginia Office of Legislative Auditor, *Preliminary Performance Review of Public Defender Services* (1998) - available at www.wvpds.org ; West Virginia Public Defender Services, *Report of the Indigent Defense Task Force*, January 2000 – also available at www.wvpds.org . Report includes: The Spangenberg Group, *Final Report to the West Virginia Indigent Defense Task Force*, January 2000; North Carolina Indigent Defense Services, *FY02 North Carolina Public Defender & Private Assigned Counsel Cost Benefit Analysis*, 2003 – available at www.ncids.org .

²⁷ 2.14 *Qualifications, Conditions of Employment, and Role of the Administrator*: “The functions of the administrator should include, but not be limited to, the following: developing and executing operational policy and control of the system; assisting the governing body in discharging its responsibilities; further assisting the governing body in the development of the budget, and in planning and establishing fee schedules and fiscal controls; acquiring such staff as is necessary to carry out the mission of the system; designing the internal operational and administrative controls necessary for the orderly disposition of cases; designing and implementing orientation and training programs for assigned counsel; and developing access to supporting services.

The administrator should have the authority to select the attorneys who will comprise the assigned counsel panel; to suspend or dismiss panel members for cause, subject to the review of the governing body; to hire and discharge such staff as is necessary to operate the system; to monitor the quality of the services being rendered and to take appropriate measures to maintain a competent level of services; to approve expenditures for the acquisition of supporting services; and to approve the payment of attorney fee vouchers. However, requests for fees exceeding the recommended maximum, or appeals from the administrator's action, should be received by a panel of attorneys appointed by the governing board.”

²⁸ Amburgey, Bryce. Kentucky Department of Public Advocacy. “Will 9/11 Drive Crime Rates and Defender Workloads Up? The Experts Say Yes.” *NLADA Cornerstone*, Winter 2001/2002, Issue 4; Gould, Eric with Bruce Weinberg and David Mustard. “Crime Rates and Local Labor Market Opportunities in the United State: 1979-1997. National bureau of Economic Research Summer Institute Workshop. Cambridge, MA. July 6, 1998 (Revised October 2000).

Thus, at a time when tax-revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system is often expected to increase its workload. A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties must provide the citizenry with other important services, such as public education. The need to balance these responsibilities while maintaining fiscal accountability to the local citizenry often leaves county officials in the unenviable position of having to choose between funding needed services and upholding the constitutional commitment to guarantee adequate indigent defense services.

Though devolution of state obligations to local government can lead to innovation, this has not generally been the case with public defense services. Rather, the states' abdication of their constitutional obligation generally produces a myriad of public defense systems within the state that vary greatly in defining who qualifies for services and the competency of the services rendered. And, lack of state oversight usually leads to the failure of most counties to both enact measurable standards for competency and to establish methods to monitor compliance therewith, producing public defense systems across the state in which the loss of one's liberty may be more dependent on a person's income-level and the jurisdiction in which the crime is alleged to have been committed, than on the factual merits of the case.

ASSESSMENT: Principle 2 addresses broad systemic concerns that are not within the power of OPD management to address. In terms of establishing a public defender office and maintaining the involvement of the private bar, Santa Clara County is in compliance with Principle 2. Though we were informed that the tertiary assigned counsel system is administered consistently with national standards, the scope of the current assessment did not include a review of that program.

What we can state is that although the State of California funds the Office of the State Public Defender to handle direct appeals in capital cases and the California Habeas Resource Center to handle state and federal habeas corpus proceedings for capital defendants,²⁹ California contributes very little financial resources to ensure the adequacy of the services provided at the trial level.³⁰ Instead, each of California's counties are responsible for administering and funding indigent defense services and may provide services through a public defender office, an assigned counsel system, a contract defender system, or any combination thereof. Such a system places California among the minority of states who contribute less than half of all indigent defense expenditures.³¹

²⁹ The Habeas Resource Center also evaluates and recruits private counsel to handle capital case.

³⁰ For example, "Senate Bill 90" authorizes state reimbursement to counties for the cost of services provided indigent clients in limited areas, such as: Sexually Violent Predators; Not Guilty by Reason of Insanity; and, Developmentally Disabled Offenders.

³¹ Forty-four percent of the states (22 of 50) have moved to enforce the *Gideon* decision by vesting the responsibility for funding indigent defense services entirely at the state-level (Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Wisconsin, and West Virginia). Another nine states now fund at least half of all indigent defense costs (Florida, Kansas, Kentucky, Montana, North Dakota, Oklahoma, South Carolina, Tennessee, and Wyoming), and one other state (Alabama) funds indigent defense services through a combination of court fees and state money (bringing the total number of states that take at least an equal share in funding the right to counsel to 32, or 64% of the states.). The American Bar Association, Bar Information Program report *50 State and County Expenditures for Indigent Defense Services, FY 2002* reports that California contributes

RECOMMENDATION: While the issue of statewide funding is well beyond the scope of the current report, California’s ranking with respect to indigent defense spending (43rd out of the 50 states) cries out for some future scrutiny.

3. Client Eligibility

The third of the ABA’s *Ten Principles* addresses the obligation of indigent defense systems to provide for prompt financial eligibility screening of defendants, toward the goal of early appointment of counsel:

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request, and usually within 24 hours thereafter.

Standardized procedures for client eligibility screening serve the interest of uniformity and equality of treatment of defendants with limited resources. When individual courts and jurisdictions are free to define financial eligibility as they see fit – e.g., ranging from “absolutely destitute” to “inability to obtain adequate representation without substantial hardship,” with factors such as employment or ability to post bond considered disqualifying in some jurisdictions but not in others – then the resulting unequal application of the Sixth Amendment has been suggested, by the National Study Commission on Defense Services, to constitute a violation of both due process and equal protection.³²

Although national standards direct that client eligibility determinations should be performed by public defense agencies,³³ various jurisdictions provide for determinations to be made by other entities, such as judges, court clerks, or probation or pretrial services officers. Regardless of *who* conducts the determinations, there remains another central focus of standards regarding financial eligibility determinations: *when* they are made. The promptness of the eligibility determination delimits the speed with which counsel may commence representation of the client, which in turn influences important pretrial rights, including those of a constitutional dimension, and the duration of pretrial and pre-appointment detention. Requirements of prompt appointment of counsel are based on the constitutional requirement that the right to counsel attaches at “critical stages” that occur before trial, such as custodial interrogations,³⁴ lineups,³⁵ and preliminary hearings.³⁶ In 1991, the Supreme Court ruled that one critical stage – the probable cause determination,

approximately only 6.1% of indigent defense costs (\$30,541,000 of \$498,852,799), ranking it 43rd of the 50 states in regards to fulfilling the *Gideon* mandate. Report prepared by The Spangenberg Group, 2003.

³² NSC commentary at 72-74.

³³ NSC, Guideline 1.6. Cf. ABA *Defense Services*, Standard 5-7.3 (determinations may be made by either defense entities or by “a neutral screening agency” or the court.

³⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

³⁵ *Kirby v. Illinois*, 406 U.S. 682 (1972).

³⁶ *Coleman v. Alabama*, 399 U.S. 1 (1970).

often conducted at arraignment – is constitutionally required to be conducted within 48 hours of arrest.³⁷ Most standards take these requirements beyond the constitutional minimum requirement, to be triggered by detention or request, even though formal charges may not have been filed, in order to encourage early interviews, investigation, and resolution of cases, and avoid discrimination between the outcomes of cases involving indigent and non-indigent defendants.³⁸

ASSESSMENT: OPD performs indigency screening in Santa Clara County. Persons who are incarcerated are presumptively eligible for Public Defender services and complete a perfunctory eligibility application. Individuals receiving government assistance, such as Social Security benefits, are automatically accepted as clients. The criteria are broad enough to include persons who are employed. Because of the high cost of living in Silicon Valley, some individuals who are employed and would be classified as working or middle class in other parts of the nation are unable to afford to retain private counsel in Santa Clara County. In these instances, the Superior Court has the discretion to appoint the Public Defender.³⁹ Verification of eligibility information is generally not required of clients unless a question develops regarding the accuracy of the information provided in the eligibility assessment.

Generally the Public Defender is appointed or the client referred to the Public Defender at the first court appearance after criminal charges have been filed. After an intake interview is conducted by a Public Defender paralegal, the matter is routed to an attorney for review prior to the next court appearance. The client also is able to speak briefly with a Public Defender attorney in the courtroom at the first appearance regarding issues of bail and pretrial release as the Public Defender “specially” appears with all in custody clients who do not have private counsel present at that first appearance.

The Public Defender can and will become involved in cases before criminal charges are filed if a client requests a Public Defender to advise him regarding a pending criminal investigation. This happens rarely only because most clients do not think to contact the Public Defender when under investigation, and law enforcement has no interest in involving the Public Defender at the investigative stage of the case. Similarly, on receipt of a call from a potential client or the police indicating that an individual requests assistance during police interrogation, the Public Defender will represent the client immediately. In homicide cases and other high profile matters involving press coverage, administration can direct an attorney to see the client prior to the first court appearance to make Public Defender services available if the client wishes them. In Juvenile matters, the Public Defender interviews all minors in custody prior to the first detention hearing, and an attorney speaks with the minor prior to the first court appearance.

RECOMMENDATION: OPD is in compliance with this standard.

³⁷ *County of Riverside v. McGlaughlin*, 500 U.S. 44.

³⁸ *ABA Defense Services*, commentary to Standard 5-6.1, at 78-79.

³⁹ Persons marginally above the eligibility criteria can obtain counsel through the Modest Means Panel, a volunteer branch of the local bar association. Finding adequate representation for working class individuals continues to be a system wide challenge. On some occasions, the court will appoint the Public Defender if no other reasonable alternative is available.

4. Confidential Meeting Space

The fourth of the ABA's *Ten Principles* provides that in an effective public defense delivery system –

Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.

As the Principle itself states, the purpose is “to ensure confidential communications” between attorney and client. This effectuates the individual attorney’s professional ethical obligation to preserve attorney-client confidences,⁴⁰ the breach of which is punishable by bar disciplinary action. It also effectuates the responsibility of the jurisdiction and the indigent defense system to provide a structure in which confidentiality may be preserved⁴¹ – perhaps nowhere more important than in indigent criminal defense, where liberty and even life are at stake, and client mistrust of the public defender as a paid agent of the state is high.⁴²

ASSESSMENT: To the extent that OPD is in control of the meeting space it is in compliance with this principle. Adequate confidential meeting space is available at the OPD main office and at each of the branch offices. While most of the remaining spaces conform to standards, there are confidentiality concerns with the holding cells and interview rooms in some of the jails and court facilities in the county, we were told. Jail confidentiality has been improved somewhat in the last two years but is still a common topic of discussion at periodic meetings with County Department of Correction administrators.

RECOMMENDATION: OPD should continue to work with the County Management and representatives of the other criminal justice components to ensure confidentiality in all areas in which attorney-client conversations occur.

5. Workload

The fifth of the ABA's *Ten Principles* provides:

⁴⁰ ABA *Model Rules of Professional Conduct*, Rule 1.6; *Model Code of Professional Responsibility*, DR 4-101; ABA *Defense Function*, Standard 4-3.1; NLADA *Performance Guidelines*, 2.2.

⁴¹ NSC, Guideline 5.10

⁴² *Id.*, and commentary at p. 460.

Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards⁴³ should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

Regulating an attorney's workload is one of the simplest, most common and direct safeguards against overloaded public defense attorneys and deficient defense representation for low-income people facing criminal charges. The National Advisory Commission on Criminal Justice Standards and Goals first developed numerical caseload limits in 1973⁴⁴ under the auspices of the U.S. Department of Justice, which, with slight modifications in some jurisdictions, have been widely adopted and proven quite durable in the intervening three decades.⁴⁵ They have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing "workload" rather than simply the number of cases, by assigning different "weights" to different types of cases, proceedings and dispositions, depending on how much time is required to provide adequate representation.⁴⁶ Workload limits have been reinforced in recent years by a growing number of systemic challenges to under funded indigent defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender's caseloads will inevitably preclude the furnishing of adequate defense representation.⁴⁷ Many other cases have been resolved by way of settlement.

⁴³ See n.35, *infra*.

⁴⁴ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (*Contracting*, Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998).

⁴⁵ See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the NAC caseload limits.

⁴⁶ See *Case Weighting Systems: A handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) (www.ncjrs.org/pdffiles1/bja/185632.pdf).

⁴⁷ See, e.g., *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), *cert. den.* 454 U.S. 1142 (1982); *State v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983); *Corenevsky v. Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *State v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *People v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), *cert den.* 495 U.S. 957 (1989); *Hatten v. State*, 561 So.2d 562 (Fla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *State v. Peart*, 621 So.2d 780 (La. 1993); *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996).

ASSESSMENT: Although OPD does not have a separate written policy or standard on workload, they are aware of NAC, NLADA and ABA caseload/workload guidelines. The office also reports that the standard is regularly adhered to with caseloads of individual attorneys being monitored continuously.

Having said this, the office could not produce statistical evidence showing this to be the case, due in large part to the current transition from an outdated case-tracking system to a new system with Crystal Reports® capabilities. In an effort to verify the OPD caseload numbers against the NAC standards, NLADA requested and received the underlying data tables from the old system in Microsoft Access format to run its own data analysis.

When analyzing public defender workload, one must not simply look at the number of cases opened in any given year but rather the entire workload of attorneys, including pending cases carried over from year to year.⁴⁸ The OPD database obtained by NLADA presented numerous obstacles in determining the average number of pending cases because the case-tracking system did not include “disposition dates” for cases. As such, it was not easy to determine at what point during a given year a case was closed or even during which year the case was brought to final disposition.

To address this issue, NLADA first determined the number and percentages of cases opened by OPD for the four year period from 1998-2001.

Table 1A

OPD Open Cases

OPEN CASES	1998	1999	2000	2001
Advice & Assistance	0	7	6	15
Felony	7,533	7,241	7,196	7,660
Homicide	34	30	21	17
Juvenile Delinquency	5,030	4,125	3,894	3,725
Mental Health	423	437	408	502
Misdemeanor	7,206	7,004	6,827	7,229
Probation Violation	4,202	2,384	4,048	3,836
Special Proceeding	133	134	95	157
Total	24,561	21,362	22,495	23,141

Table 1B

Percentage of OPD Cases Opened by Case Type

OPEN CASES	1998	1999	2000	2001
Advice & Assistance	0.0%	0.0%	0.0%	0.1%
Felony	30.7%	33.9%	32.0%	33.1%
Homicide	0.1%	0.1%	0.1%	0.1%
Juvenile Delinquency	20.5%	19.3%	17.3%	16.1%
Mental Health	1.7%	2.0%	1.8%	2.2%
Misdemeanor	29.3%	32.8%	30.3%	31.2%
Probation Violation	17.1%	11.2%	18.0%	16.6%
Special Proceeding	0.5%	0.6%	0.4%	0.7%
Total	100.0%	100.0%	100.0%	100.0%

⁴⁸ For indigent defense administrators wishing to implement workload standard or to follow the NLADA assessment methodology, it is very important to use the standard definition of what constitutes a “case.” The Conference of State Court Administrators and the National Center for State Courts’ publication *State Court Model Statistical Dictionary, 1989*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case (page 19).”

Next, NLADA determined the disposition status of each case represented in Table 1A (above) to determine the number and percentage of cases that remain opened:

Table 2A
Disposition Status of OPD Cases by Year Opened

Status	1998	1999	2000	2001
Closed	24,161	20,966	21,841	21,122
Open	81	95	255	1,178
Re-Opened	29	55	142	343
Temporarily closed	290	246	257	498
Total	24,561	21,362	22,495	23,141

Table 2B
Percentage of OPD Disposition Status of Cases

Status	1998	1999	2000	2001
Closed	98.37%	98.15%	97.09%	91.28%
Open	0.33%	0.44%	1.13%	5.09%
Re-Opened	0.12%	0.26%	0.63%	1.48%
Temporarily closed	1.18%	1.15%	1.14%	2.15%
Total	100.00%	100.00%	100.00%	100.00%

Table 2C
Disposition Status of OPD Cases by Year Opened by Case Type

		1998	1999	2000	2001
Advice & Assistance	Closed	-	4	6	14
	Open	-	3	-	-
	Temporarily Closed	-	-	-	1
Felony	Closed	7,436	7,156	7,005	6,813
	Open	19	18	81	518
	Re-open	5	15	35	153
	Temporarily Closed	73	52	75	176
Homicide	Closed	32	26	15	8
	Open	2	3	5	8
	Re-open	-	1	1	1
	Temporarily Closed	-	-	-	-
Juvenile Delinquency	Closed	4,975	4,087	3,840	3,583
	Open	18	18	37	102
	Re-open	-	1	8	17
	Temporarily Closed	37	19	9	23
Mental Health	Closed	403	407	359	441
	Open	1	2	2	2
	Re-open	19	28	47	59
	Temporarily Closed	-	-	-	-
Misdemeanor	Closed	7,044	6,829	6,630	6,589
	Open	18	24	49	302
	Re-open	2	6	23	88
	Temporarily Closed	142	145	125	250

Table 2C (Continued)

Disposition Status of OPD Cases by Year Opened by Case Type

Probation Violation	Closed	4,139	2,330	3,897	3,561
	Open	23	26	77	203
	Re-open	2	4	26	25
	Temporarily Closed	38	24	48	47
Special Proceedings	Closed	132	127	89	113
	Open	-	1	4	43
	Re-open	1	-	2	-
	Temporarily Closed	-	6	-	1
TOTAL		24,561	21,362	22,495	23,141

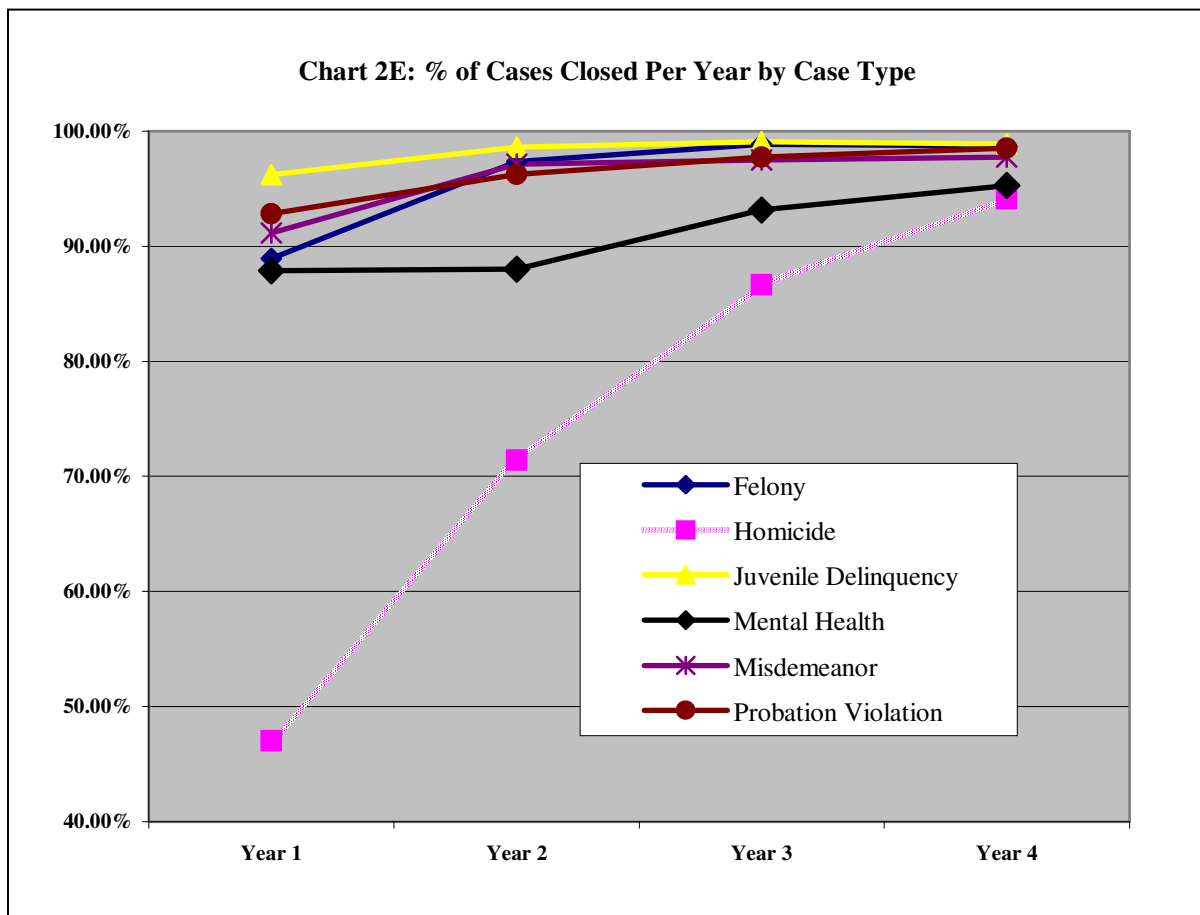
Table 2D

Percentage of OPD Disposition Status of Cases by Year Opened by Case Type

		1998	1999	2000	2001
Advice & Assistance	Closed	N/A	57.14%	100.00%	93.33%
	Open	N/A	42.86%	0.00%	0.00%
	Re-open	N/A	0.00%	0.00%	0.00%
	Temporarily Closed	N/A	0.00%	0.00%	6.67%
Felony	Closed	98.71%	98.83%	97.35%	88.94%
	Open	0.25%	0.25%	1.13%	6.76%
	Re-open	0.07%	0.21%	0.49%	2.00%
	Temporarily Closed	0.97%	0.72%	1.04%	2.30%
Homicide	Closed	94.12%	86.67%	71.43%	47.06%
	Open	5.88%	10.00%	23.81%	47.06%
	Re-open	0.00%	3.33%	4.76%	5.88%
	Temporarily Closed	0.00%	0.00%	0.00%	0.00%
Juvenile Delinquency	Closed	98.91%	99.08%	98.61%	96.19%
	Open	0.36%	0.44%	0.95%	2.74%
	Re-open	0.00%	0.02%	0.21%	0.46%
	Temporarily Closed	0.74%	0.46%	0.23%	0.62%
Mental Health	Closed	95.27%	93.14%	87.99%	87.85%
	Open	0.24%	0.46%	0.49%	0.40%
	Re-open	4.49%	6.41%	11.52%	11.75%
	Temporarily Closed	0.00%	0.00%	0.00%	0.00%
Misdemeanor	Closed	97.75%	97.50%	97.11%	91.15%
	Open	0.25%	0.34%	0.72%	4.18%
	Re-open	0.03%	0.09%	0.34%	1.22%
	Temporarily Closed	1.97%	2.07%	1.83%	3.46%
Probation Violation	Closed	98.50%	97.73%	96.27%	92.83%
	Open	0.55%	1.09%	1.90%	5.29%
	Re-open	0.05%	0.17%	0.64%	0.65%
	Temporarily Closed	0.90%	1.01%	1.19%	1.23%
Special Proceeding	Closed	99.25%	94.78%	93.68%	71.97%
	Open	0.00%	0.75%	4.21%	27.39%
	Re-open	0.75%	0.00%	2.11%	0.00%
	Temporarily Closed	0.00%	4.48%	0.00%	0.64%

NLADA used the percentage of cases closed for the four-year period displayed in Table 2D (above) as a guide in estimating the number of cases closed in each subsequent year after the case was opened. For example, since 92.83% of all probation violation cases opened in 2001 were brought to disposition within that same year NLADA therefore assumed that on average 92.83% of all probation violation cases were closed the same year they were opened for each of the years from 1998 to 2001. Similarly, since 96.27% of probation violation cases that were opened in 2000 were disposed by the end of 2001, we assumed that for any given year 96.27% of probation violation cases were closed by the end of the second year after it was opened.

As one would expect, the percentage of cases closed grows with each passing year. More serious cases (i.e., homicides and felonies) are closed at a slower rate than misdemeanors and probation violations, as shown in Chart 2E:



By applying the percentages in Table 2D/Chart 2E to the number of open case in Table 1A, NLADA was able to approximate the number of pending cases by case type in each subsequent year after the case was opened, as displayed in Tables 3A-D (below):

Table 3A-D

**Number of OPD Cases Still Pending by Case Type
by the Close of Each Subsequent Year (Based on Year Opened)**

3A - Pending: Opened in 1998	1999	2000	2001	2002
Felony	660	121	34	24
Homicide	18	10	5	2
Juvenile Delinquency	161	58	23	18
Mental Health	51	51	29	20
Misdemeanor	389	76	31	20
Probation Violation	250	107	53	25

3B - Pending: Opened in 1999	1999	2000	2001	2002
Felony	0	634	117	33
Homicide	0	16	9	4
Juvenile Delinquency	0	132	48	19
Mental Health	0	53	52	30
Misdemeanor	0	378	74	30
Probation Violation	0	142	61	30

3C - Pending: Opened in 2000	1999	2000	2001	2002
Felony	0	0	630	116
Homicide	0	0	11	6
Juvenile Delinquency	0	0	124	45
Mental Health	0	0	50	49
Misdemeanor	0	0	368	72
Probation Violation	0	0	241	103

3D - Pending: Opened in 2001	1999	2000	2001	2002
Felony	0	0	0	671
Homicide	0	0	0	9
Juvenile Delinquency	0	0	0	119
Mental Health	0	0	0	61
Misdemeanor	0	0	0	390
Probation Violation	0	0	0	228

Table 3E (below) tallies the pending cases displayed in Tables 3A-D to show an estimated number of pending cases between 1999-2002, based on cases opened between 1998-2001.⁴⁹

⁴⁹ For the workload analysis, NLADA will only look at the projected workload of 2002 since workload estimates for the prior years are more impacted by cases opened prior to 1998 for which we do not have accurate data.

Table 3E

**Total Estimated Number of OPD Cases Still Pending by Case Type
by the Close of Each Subsequent Year (Based on All Years)**

Pending: Totals	1999	2000	2001	2002
Felony	660	756	781	844
Homicide	18	26	24	21
Juvenile Delinquency	161	190	195	201
Mental Health	51	104	131	160
Misdemeanor	389	454	473	512
Probation Violation	250	249	354	386

Table 3C

Total Number of OPD Cases For Workload Analysis

[Opened Cases (1A) + Pending Cases (3B)]

Workload (Opened + Pending)	1998	1999	2000	2001	2002
Felony	7,533	7,901	7,952	8,441	8,629
Homicide	34	48	47	41	31
Juvenile Delinquency	5,030	4,286	4,084	3,920	3,716
Mental Health	423	488	512	633	674
Misdemeanor	7,206	7,393	7,281	7,702	7,757
Probation Violation	4,202	2,634	4,297	4,190	5,261
Total	24,428	22,749	24,172	24,928	26,067

Table 3C shows the best estimate of the workload of OPD for 2002. To determine how OPD stands in relation to the national standards one simply needs to divide the standard into the workload estimate.⁵⁰ Table 5 (see next page) projects the appropriate staff needed to handle the estimated OPD 2002 workload:

⁵⁰ Though there is general recognition that homicide cases require more workload effort than other types of felonies, there is currently no specific "homicide" national standard. NLADA assumes that an attorney should handle no more than five homicide cases in a single year, if those are the only cases she works on based on numerous case-weighting reports and jurisdiction-specific standards. See: The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study* (April 1999), p. 64. Prepared on behalf of the Tennessee Comptroller of the Treasury, under contract to the National Center for State Courts. Report available at: www.comptroller.state.tn.us/orea/reports/publdef.pdf.

National Workload Standard	Case/Atty
Felony	150
Homicide	5
Juvenile Delinquency	200
Mental Health	200
Misdemeanor	400
Probation Violation	400

Table 5
Projected OPD Staff Attorneys Needed to Handle Estimated Workload

Attorney Staff Size	2002
Felony	58
Homicide	6
Juvenile Delinquency	19
Mental Health	3
Misdemeanor	19
Probation Violation	13
Total	118

Currently, OPD has 111 staff attorneys to handle the caseload, which means they are approximately 94.6% in compliance with the NAC standards.

Additionally, the national standards assume that attorneys have proper support staff. The role of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) in public defender offices has taken on more importance over time both in terms of quality and cost-effectiveness. Properly trained investigators, for example, can find and interview witnesses, visit crimes scenes and other critical tasks pertinent to adequate representation that would otherwise have to be conducted by a busy attorney. Professional investigators may in fact be better skilled for these tasks and, generally, are compensated at a lower rate than attorneys. Moreover, the use of investigators reduces the inefficiencies and costs that arise when an attorney is forced to withdraw from a case because his investigation has made him a witness. Similarly, professionally trained social workers can have a great impact on the overall cost of the criminal justice system by finding treatment for defendants with mental handicaps and/or substance abuse problems who otherwise may be committed to the jail at greater cost to the county;⁵¹ Such efforts are also recognized as improving the safety of the community, by addressing client problems which would otherwise contribute to an increased risk of recidivism.

Both the ABA and NLADA standards make clear that support services are a vital part of adequate representation. Standard 5-4.1 of the ABA Defense Services Standards states: “The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process.” Other national standards go further than the ABA standard in quantifying appropriate support staff levels. The National Study Commission on Defense Services directs that “defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an

⁵¹ For example, national indigent defense standards require attorneys to present the sentencing judge with researched, dispositional alternatives. Social workers can do much of the work faster (due to their experience) and at a lower cost.

office.”⁵² Further NLADA support staffing analysis are based on the following National Study Commission on Defense Services recommended guidelines:⁵³

- One full time Legal Assistant for every four FTE attorneys
- One full time Social Service Caseworker for every 450 Felony Cases
- One full time Social Service Caseworker for every 600 Juvenile Cases
- One full time Social Service Caseworker for every 1200 Misdemeanor Cases

Table 5
Projected OPD Staff Based on National Standards

Projected Staff Size	2002
Staff Attorneys	118
Supervising Attorneys (1:10)	12
Investigators (1:3)	39
Paralegals (1:4)	30
Social Workers	31
Total	230

Table 6
Actual OPD Staff

Actual Staff Size	2002
Staff Attorneys	111
Supervising Attorneys	5
Investigators	33
Paralegals	30
Social Workers	2
Total	181

Table 7
Difference Between Projected & Actual OPD Staff Size

Difference	2002
Staff Attorneys	7
Supervising Attorneys	7
Investigators	6
Paralegals	(0)
Social Workers	29
Total	49

⁵² *National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, 1976, 4.1, Task Allocation in the Trial Function: Specialists and Supporting Services.*

⁵³ Numeric guidelines for professional business management staff are not in the National Study Commission guidelines, but they do comment that “professional business management staff should be employed by defender offices to provide expertise in budget development and financial management, personnel administration, purchasing, data processing, statistics, record-keeping and information systems, facilities management and other administrative services if senior legal management are expending at least one person-year of effort for these functions or where administrative and business management functions are not being performed effectively and on a timely basis.”

RECOMMENDATION: Because the workload analysis is premised upon assumptions that were made to substitute for insufficient data, we can only go so far as to state that based on those assumptions, and our observations and conversations with staff it appears that OPD is in substantial compliance with national standards for most staff categories. Once the new case management system is fully operational and has produced more accurate data, the OPD can use the formulas as applied here to verify the estimates and conclusions in this report. If those numbers are verified the office would benefit from increased supervision for attorneys. The OPD management should also begin discussions with the County Manager on a plan to hire social workers.

6. Attorney Qualifications

The sixth of the ABA's *Ten Principles* provides that:

Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

This requirement derives from all attorneys' ethical obligations to accept only those cases for which they know they have the knowledge and experience to offer zealous and quality representation.⁵⁴ This Principle integrates this duty together with various systemic interests – such as efficiency and the avoidance of attorney errors, reversals and retrials, findings of ineffective assistance of counsel, wrongful convictions and/or executions, and attendant malpractice liability – and restates it as an obligation of the indigent defense system within which the attorney is engaged to provide legal representation services.

Typically, this requirement is implemented by dividing up attorneys into classifications according to their years and types of experience and training, which correspond to the level of complexity of cases, the severity of charges and potential punishments, and the degree of legal skills generally required. Attorneys can rise from one classification to the next by accumulating experience and training. Assigned counsel programs commonly maintain various different “lists” from which attorneys are selected according to the classification of the offense. Public defender programs place attorneys in different divisions of the office. Since the complexity and demands of death penalty litigation are unique and high, attorney qualifications are a common element of standards for capital defense, whether through statute, state Supreme Court rule, or indigent defense system directive.⁵⁵

Some of the most important training that any public defender receives is that provided when s/he is just out of law school or a clerkship and is about to begin representing clients. This training ideally teaches the new attorney how to interview a client, the level of investigation, legal research and other preparation necessary for a

⁵⁴ See, e.g., *ABA Model Rules of Professional Conduct*, Rule 1.1; *ABA Defense Function*, Standard 4-1.6(a); *NLADA Performance Guidelines*, 1.3(a).

⁵⁵ *OJP Compendium*, Vol. 3 (www.ojp.usdoj.gov/indigentdefense/compendium/standardsv3/v3b.htm#Top).

competent defense, trial tactics, relevant case law, and ethical obligations. It includes a thorough introduction to the workings of the public defender's office, the district attorney's office, the court system, and the probation and sheriff's departments as well as any other corrections components. And it makes use of role playing and other mock exercises, and videotapes to record student work on required skills such as direct and cross-examination, and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.⁵⁶

ASSESSMENT: OPD adheres to this principle, closely assessing and monitoring attorneys' work and performance to determine appropriate handling of cases. New attorneys are evaluated and assigned to a rotation based upon their experience. Generally, attorneys are assigned first to misdemeanor cases that carry minimum potential punishments, and qualify for assignment to more serious cases based on experience and demonstrated proficiency. The OPD Training Officer provides a training program for entry-level attorneys who are assigned to misdemeanor cases, attorneys entering juvenile court, attorneys assigned to preliminary hearings and to their first felony tours. The completion of these training programs is mandatory before the attorney can move to a more complex assignment, e.g., from misdemeanors to felonies. Division Supervisors are assigned to each group as well. A large part of the Supervisor's function is to assess the attorney's progress and to augment the attorney's experience where necessary, offer constructive criticism, and answer questions. Additionally, OPD has three full-time attorneys who answer questions and write motions for attorneys. Together, the Training Officer, Research Division and Supervisors provide constant feedback as to an attorney's qualifications to handle certain types of cases.

Among the many ways in which the OPD implements training effectively is through intensive case reviews in which a group of supervisors, trial attorneys, investigators and paralegals dissect and critique an attorney's work on an on-going case. This challenges the lawyer whose case is being "presented" and gives him or her the advantage of learning from others. This training technique is widely used in medical education, but it is quite advanced for public defender agencies. In the staffing meetings the NLADA team observed, the presenting attorneys were open to the process and did not become defensive. This suggests a high level of trust among the employees of the organization and between supervisors and staff at all levels.

RECOMMENDATION: NLADA finds OPD in compliance with this principle.

7. *Continuity of Representation*

The seventh of the ABA's *Ten Principles* addresses the question of whether an indigent client may be represented by different attorneys at different stages of the proceeding ("stage," "zone" or "horizontal" representation), or should have the same

⁵⁶ As the standards indicate, training should be a continual facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Thus, on-going training is always critical, but even more so where experienced attorneys never received any initial "New Attorney" training and may need to re-learn skills or unlearn bad practices. Without training, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. This is especially true when there are no practice guidelines in place and performance is not monitored on an on-going basis.

attorney throughout (“vertical” representation). The Principle states an effective public defense system requires that:

The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

Standards on this subject note that the reasons for public defender offices to use horizontal representation are usually related to saving money and time. Lawyers need only sit in one place all day long, receiving a stream of clients and files and then passing them on to another lawyer for the next stage, in the manner of an “assembly line.”⁵⁷ But standards uniformly and explicitly reject horizontal representation,⁵⁸ for various reasons: it inhibits the establishment of an attorney-client relationship, fosters in attorneys a lack of accountability and responsibility for the outcome of a case, increases the likelihood of omissions of necessary work as the case passes between attorneys, and is not cost-effective and is demoralizing to clients as they are re-interviewed by a parade of staff starting from scratch.⁵⁹

ASSESSMENT: OPD practices vertical representation in the majority of cases. Because the Superior Court does not use a direct calendar system throughout the county, however, there are some calendar assignments that result in more than one attorney representing a client in certain cases. Misdemeanor cases are assigned vertically through direct calendaring systems, as are all juvenile matters (i.e., the attorney assigned to particular misdemeanor or juvenile courtrooms represents all misdemeanor clients from inception of case to conclusion). Ninety percent of felony drug cases are assigned vertically, as are all homicides, sex cases, serious felonies, cases involving seriously mentally ill clients, sexually violent predator cases, three strikes cases, and most outlying-court misdemeanors and felonies. In lower level felony matters in San Jose, the Superior Court conducts a master calendar for preliminary hearings and trials. These cases are not all assigned vertically because attorneys cannot appear in the number of courtrooms throughout the County to which they can be assigned by the master trial judge on a particular day.

RECOMMENDATION: Although OPD is not in complete compliance with this Principle the office cannot change the practice without a corresponding restructuring of the court process. Since changing current practice would effect agencies beyond the public defender, a countywide criminal justice coordinating committee or task force is one mechanism for addressing and resolving this issue.

⁵⁷ NSC at 470.

⁵⁸ ABA *Defense Services*, commentary to Standard 5-6.2, at 83.

⁵⁹ NSC at 462-470, citing *Wallace v. Kern* (slip op., E.D.N.Y. May 10, 1973), at 30; *Moore v. U.S.* (432 F.2d 730, 736 (3rd Cir. 1970)); and *U.S. ex rel Thomas v. Zelker*, 332 F.Supp. 595, 599 (S.D.N.Y. 1971).

8. Resource Parity

The eighth of the ABA's *Ten Principles* addresses the issue of resources for indigent defense, specifically in comparison with prosecution resources:

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.... No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

Chief Justice Warren Burger wrote in 1972 "society's goal should be 'that the system for providing the counsel and facilities for the defense should be as good as the system which society provides for the prosecution.'"⁶⁰ U.S. Attorney General Janet Reno stated in 1999 that, "If one leg of the system is weaker than the others, the whole system will ultimately falter." The Justice Department's 1999 report, *Improving Criminal Justice* concludes that:

Salary parity between prosecutors and defenders at all experience levels is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing. Concomitant with salary parity is the need to maintain comparable staffing and workloads – the innately linked notions of "equal pay" for "equal work." The concept of parity includes all related resource allocations, including support, investigative and expert services, physical facilities such as a law library, computers and proximity to the courthouse, as well as institutional issues such as access to federal grant programs and student loan forgiveness options.⁶¹

ASSESSMENT: The current assessment did not provide for an examination of prosecution resources so there is not a basis for a complete evaluation of parity. However, staff salary is one measure of compliance with this principle, and legal and support staffs of both the prosecutor's and public defender offices are classified as county employees resulting in salary parity between the two organizations.

Another measure of parity is the extent to which indigent defense representatives are included as equal participants in the effort to improve the criminal justice system generally. OPD participated in the planning and implementation of Drug Treatment

⁶⁰ *Argersinger v. Hamlin*, 407 U.S. 25, 43 (concurring opinion) (citing ABA Standards, Providing Defense Services).

⁶¹ Note 9, *supra*, at x.

Court in 1998-9, and Prop. 36 Treatment Court last year. The Public Defender is a standing member of the Board of Supervisors' Public Safety and Justice Committee and has recently been invited to play a leadership role in the Juvenile Detention Reform effort now taking shape in the County. In 2002, OPD pushed the court and the County to improve services to mentally ill clients by demanding better local treatment for these incarcerated clients while they wait for hospital bed space or while they wait for extension hearings to commence. The court and County responded favorably in both instances.

9. *Continuing Legal Education & Training*

The ninth of the ABA's Ten Principles provides:

Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

Standards requiring training are typically cast, like the discussion of attorney qualifications above, in terms of both quality of representation to clients and various systemic interests in maximizing efficiency and avoiding errors. Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a "cost-saving device" because of the "cost of retrials based on trial errors by defense counsel or on counsel's ineffectiveness." The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members "more productive, efficient and effective."⁶² In adopting the *Ten Principles* in 2002, the ABA emphasized the particular importance of training with regard to indigent criminal defense by endorsing, for the first time in any area of legal practice, a requirement of *mandatory* continuing legal education. Standards typically relate indigent defense training to the level of training available to prosecutors in the jurisdiction. As stated in the Attorney General's Introduction to *Redefining Leadership for Equal Defense: Final Report of National Symposium on Indigent Defense 2000*, "public defenders need access to training resources to the same degree that Federal, State and local prosecutors have the same."⁶³

ASSESSMENT: California is a Mandatory Continuing Legal Education state. The minimum requirements are that within given three-year periods, every practicing attorney must have 25 hours of MCLE. Of the 25 hours, four must be in ethics, one in elimination of bias in the legal profession, and one in substance abuse/emotional distress. OPD is a state approved MCLE provider, which means that the attorneys and paralegals may fulfill their MCLE obligations in house. The Training Attorney is the MCLE coordinator, and determines which in house trainings qualify for MCLE credit, based on the state's requirements. OPD routinely provides at least two hours of MCLE training per week.

Attorneys and paralegals are also free to obtain MCLE elsewhere. California is fortunate to have three excellent criminal defense organizations: California Public Defenders Association (CPDA), California Attorneys for Criminal Justice (CACJ) and

⁶² www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards.

⁶³ Office of Justice Programs, U.S. Department of Justice (www.ojp.usdoj.gov/indigentdefense/symposium.pdf), at viii.

Women Defenders. All of these organizations provide specialized criminal defense training, most of which is MCLE certified. California also has an organization called Continuing Education of the Bar (CEB) which provides training, a small part of which is in the criminal law arena.

OPD created a full-time training position that has resulted in expanded training assessments and the development of materials and in-house training sessions. This critically important position is a significant factor in OPD's ability to provide adequate training. In-house training programs are well supplemented with the agency's use of case-review and mentoring processes, described above. The OPD training program makes training available to attorneys correlated to the attorney's current assignments. There is weekly misdemeanor team training, weekly juvenile team training, and weekly general office training. The general training is usually geared towards felony attorneys. As an attorney moves through the different assignments for the first time, they receive specialized training. For example, before an attorney moves to the preliminary hearing team and is handling adult felonies, the attorney receives training in how to handle preliminary hearings, and the fundamentals of felony sentencing including the implication of "Three Strikes" laws. OPD also hired an experienced immigration attorney to work on cases and train attorney staff on the immigration consequences of pleas and crimes.

There are also team meetings, not necessarily trainings, for all teams, including the felony team and the Special Trials Unit (STU team), which does homicides and other extraordinary cases. The misdemeanor team and felony team have weekly scheduled case staffings with senior attorneys. The juvenile team and the STU team schedule case staffings on an as-needed basis.

The office has four separate training budgets. Santa Clara County attorneys are members of the Government Attorneys Association, which is a bargaining unit. Part of their contract allows for Minimum Continuing Legal Education (\$150 per attorney), Tuition Reimbursement (\$450 per attorney) and Professional Development (50% reimbursement for training and educational materials, and 16 hours of "comp time" for training done during non-working hours). In addition, the office has a general training line item that is used for in-house training expenses, training expenses for non-attorneys, and county requested training not subject to the 50% reimbursement.

Paralegals and investigators in the office are encouraged to attend the various training meetings. Additionally, both the paralegals and the investigation division conduct their own training. Currently in California, paralegals are required to attend some MCLE. The county has an excellent professional development program and all employees are encouraged to take advantage of it. The county's program includes everything from management training to wellness and health programs to computer skills.⁶⁴

RECOMMENDATION: None. OPD is in compliance with this standard.

10. Attorney Performance

The tenth of the ABA's *Ten Principles* frames standards regarding the duties of attorneys in individual cases in terms of the indigent defense system's obligation to ensure that attorneys are monitored for compliance with such standards:

⁶⁴ Descriptions of the various professional development programs are available at www.santaclaracounty.org/deoed.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency [citing the ABA's Defense Function Standards and NLADA's Performance Guidelines for Criminal Defense Representation].

An effective performance plan is much more than an evaluation form or process for monitoring compliance with standards. Without question assessment is an important part of performance planning, but a sound performance plans entail much more. There is no “one-size-fits-all” performance plan. This is not only because organizations’ performance needs differ, but also because successful performance plans allow for some opportunity for staff to shape the plan. Despite differences in performance plans, sometimes even between similarly situated defender offices, there are many features that consistently appear in plans that work well. They include:

- *Clear plan objectives.* These can vary greatly both in kind and number but they commonly include such things as: fostering and supporting professional development; giving people clear guidance about what is expected of them; and supporting accountability. Moreover, effective performance plans are tied to and support the fulfillment of the agency’s mission and vision. Critically, effective plans emphasize a goal of promoting employees’ performance success.
- *Specific performance guidelines.* People need to know what is expected of them in order to work to fulfill those expectations. Performance expectations should include for example, attitudinal expectations and administrative responsibilities as well as substantive knowledge and skills.
- *Specific tools and processes for (1) assessing how people are performing relative to those expectations and (2) assessing what training or other support they need to meet performance expectations.* People whose positions require them to conduct performance evaluations must be trained and evaluated as part of their performance plan so that evaluations are done fairly and consistently.
- *Specific processes for providing training, supervision and other resources that are necessary to support performance success.*

ASSESSMENT: The OPD has embarked upon a process to review and modify their performance plan. OPD has an Operational Policies & Procedures Manual, written County Policies that apply to all County staff, and established Evaluation Standards. In FY02, OPD completed the first major revision of the Operational Policies & Procedures Manual. The manual was distributed to all employees and serves as a helpful reference

compendium for a large number of office policies and internal procedures that impact the daily operation of the Office.

Department administrators participated in the review of the Operational Policies & Procedures, as did bargaining unit representatives for the Government Attorneys Association and the SEIU 715 (Clerical, Paralegal & Investigation). Staff comments were taken into consideration for future policy updates. The Evaluation Standards were established after extensive meetings, where input was solicited from attorney staff at all levels.

In addition to individual evaluation standards OPD has developed excellent and meaningful program performance measures. In light of Santa Clara County's commitment to performance-based budgeting, OPD representatives worked with the County Executive and a retained consultant to develop nine indicators for this purpose.⁶⁵ One of three general goals around which the performances are organized focuses on effective legal advocacy, and thus provides a further mechanism for internal monitoring and evaluation of performance. The other two goal categories are: prompt representation and alternatives to incarceration. In addition to tracking program performance, all three of the goals implicate criminal justice system costs.

For example, early entry into a case allows a defense organization to interview witnesses, identify client-related issues (i.e., mental illness or drug dependency) and assess the prosecution's case in an effort to bring the case to a speedy resolution. Early resolution of cases eases congestion of court dockets, decreasing the inefficient use of time by judges, prosecutors, bailiffs, clerks and other court officers and staff. Early entry also offers more potential for diversion or other forms of alternatives to incarceration. By avoiding unnecessary pretrial detention, correctional resources are more precisely targeted to people who pose a threat to public safety. OPD should be credited for being "out in front" of the performance measure movement, and for utilizing it as a tool to evaluate and support qualitative work.

RECOMMENDATION: Despite the apparent completion of the foundational work for the evaluations, most employees explained that they were not officially evaluated on a regular basis. OPD should complete the implementation of its performance plan, which should define the timing and frequency pursuant to which regular evaluations will be conducted.⁶⁶

⁶⁵ Number of incarcerated clients interviewed within three days; percent of cases opened within five days; number of cases with investigation ordered within two days; cases reversed for ineffective assistance; cases relieved for ineffective assistance; murder cases taken to trial with favorable outcomes; drug cases resulting in deferred entry of judgment (diversion); juvenile cases granted deferred entry of judgment; and juvenile cases participating in Juvenile Treatment Court.

⁶⁶ Evaluations should be conducted on a regular basis (at least once a year); they should be in writing, shown to the employee and discussed with the employee by the supervisor who conducted the evaluation. The employee must be able to submit written comments on the evaluation and there must be a grievance procedure for disagreements about conclusions contained in the evaluation. To assure that evaluations are reliably done, evaluations of supervisors must address the effective use of the performance evaluation process.

At the beginning of each evaluation period employees should meet with their supervisor(s). The meeting should be utilized to discuss performance expectations and answer questions related to the performance plan (including the evaluation) process. Together, the employee and supervisor should set performance goals for that employee for the specific evaluation period and identify areas where training or other support may be needed to achieve those goals.

Chapter III Best Practices

While the Ten Principles are an invaluable guide for gauging systemic performance, the Principles are not meant to measure all aspects of operations. This chapter highlights some of the effective, cost-effective and innovative programs and processes employed by the OPD that have not been captured elsewhere in this report.

Cost-Effectiveness

The OPD leadership thoughtfully deploys staff to take full advantage of their special skills and training in a manner that benefits clients, and is cost-effective for the agency. For example, paralegals are involved in early interviews of clients. While not a substitute for an initial attorney interview, the paralegals' skills and training assist in developing positive relations that are beneficial to the client and critical to the efficient handling of cases. The paralegals bring the advantage of an early focus on issues likely to arise if there is a disposition and sentence. They are able early on to make referrals to available community-based services and resources, and prepare disposition plans that are set by the court, the prosecutor and the law to deter future criminal activity. Their assessments of client deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), also assist attorneys fulfill their ethical obligations in capital cases. As with investigators, paralegals are cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail, and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, likely to obtain candid information upon which to predicate an effective dispositional plan; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

The cost-efficient use of paraprofessionals and investigators is enhanced by "cross-functional" supervision. The paralegals and investigators take direction both from attorneys and from their respective unit supervisors. This is an effective supervision method, and a healthy sign of mutual trust, cooperation and communication.

Innovation

Learning from other community-based approaches to criminal justice (such as community policing, community prosecution, community corrections, and community courts) that are helping to prevent crime and recidivism, defender offices are beginning to expand their focus on problem-solving and community defense. Instead of simply providing legal representation in a specific court action, many indigent defense providers are recognizing that they have unique opportunities to help clients alter the behaviors that brought them in contact with the criminal justice system in the first place, through practices such as problem-solving representation, public policy advocacy, and community outreach. OPD offers various types of community outreach and services that are among the most innovative we have seen, including participating in educational programs to young people and community groups to improve conflict-resolution skills and increase understanding of the criminal justice system. We describe four of these to illustrate ODD criminal justice collaborations and partnerships.

Fresh Lifelines for Youth (F.L.Y.) is an independent non-profit agency with a mission to reduce juvenile crime and incarceration. Specifically, F.L.Y. provides individual mentoring, legal education and referral services to individuals between 12-17 years of age, who are considered "at-risk" in school or who are involved in the delinquency court system. F.L.Y. is housed without cost in the headquarters office of the OPD, which also provides clerical support. Both organizations consider their relationship to be a successful partnership. The program's effectiveness is demonstrated by the fact that it hires former clients to work with current participants. However, while the OPD is a major source of referrals, F.L.Y. also takes referrals from other agencies, lawyers and schools. This highly successful program has received national accolades and recognition.

The OPD Expungement Program is a partnership of the OPD with the Santa Clara County Social Services Agency related to the county's CalWorks initiative. This "welfare to work" program is California's implementation of the federal TANF legislation. Of course, a record of criminal conviction can be a major barrier to obtaining employment, notwithstanding successful completion of training or other CalWorks program components. Fortunately, under California law, records of convictions of misdemeanors and certain felonies sometimes can be "expunged." This permits the person to respond that a criminal case against him or her has been dismissed--enhancing their chances to get a job. However, this is not an automatic process and action must be taken on the person's behalf to accomplish it. Under an interagency agreement, the OPD processes the necessary paperwork, applications and filings to expunge the criminal records of eligible CalWorks participants. Funding for one half FTE paralegal to support this is allocated from the CalWorks program. In turn, the Paralegal assists with presentations to CalWorks clients, collects the information necessary to complete the expungement application, submits the applications to the Probation Department and maintains case files and paperwork to complete the process. This approach to CalWorks services is unique within California, is certainly cost-effective in terms of results, and represents a highly unusual collaboration between a public defense agency and a social service agency.

The OPD participates in the "D.U.I. Courts in the Schools Project" which is administered by the County Public Health Department as part of its Traffic Safe Communities Network (TSCN). The purpose of TSCN is to prevent and control traffic-related fatalities. Actual trials of driving under the influence cases are held on high school campuses and are watched by the student body. SCCPDO attorneys represent the defendant in these trials and interact with both students and faculty outside of the trial process. This serves the purpose of teaching students about the criminal justice system, in addition to learning about problems related to drinking and driving.

The University of Santa Clara School of Law is nationally respected for its criminal justice curriculum and practicum. The OPD has participated with the School of Law's Northern California Innocence Project. This is an iteration of similar nationally acclaimed projects that have represented individuals wrongfully convicted of crimes. In many cases, individuals have been freed from prison by Innocence Projects based on "DNA" evidence. This is a highly technical and very complicated area of law and litigation in which senior OPD attorneys and the Chief Investigator have presented training to Santa Clara University law students. In turn, the law students, under the supervision of faculty members, have represented individuals in claims of wrongful conviction.

Office Environment

A standard part of NLADA's public defender organizational assessment methodology is to give support staff, professional staff, trial attorneys, supervisors and managers the opportunity to express their views on the current operations of the agency. NLADA's anonymous staff survey was disseminated during the site visit. The results show positive attitudes toward the organization and its mission, across job classification, tenure, and whether the person worked at SCCPD or the ADO. We have attached the results as Appendix B, but offer the following observations:

- a. On a scale of 1-5 (1 = strongly disagree; 5 = strongly agree) the *average* response of all staff to the statement "the mission of the SCCPD is clear to me" was 4.92.
- b. "The SCCPD has an organizational philosophy by which it accomplishes its mission": Average response - 4.56.
- c. "I am proud to say I work for the SCCPD": Average response – 4.82.
- d. "My supervisor treats me with respect": Average response – 4.81.
- e. The statement that prompted the strongest disagreement (average response – 2.16) was one that supports a finding of effective management of the SCCPD operations: "I am afraid to make mistakes for fear of consequences."

Attorneys and staff work in teams, although the members of the teams change regularly. In addition, the Office has established a Clerical-Attorney Mentoring Program (C.A.M.P.). This program provides an opportunity for legal clerks and support staff to attend court with the attorneys and to experience various types of court hearings first-hand. In this way, support staff is better able to understand the connection between what they do and what takes place in the courtroom. Staff believes that this program has improved communication and performance by participating staff members.

Community Relations

The Office of the Public Defender recently commissioned a video, which is shown in the office reception areas, that provides information on the Office of the Public Defender and the defense process. Community activities and public presentations also serve to inform the community of Public Defender services.

The Office has developed orientation packets describing the expungement program, provides various handouts in the reception area of the main office, and has contributed information for the newly designed website that will be revealed later this

year. However, the Office feels that more could be done to provide written information to the community.

The Public Defender has taken a leadership role in the Juvenile Detention Reform (JDR) initiative in Santa Clara County. The JDR Planning Committee has recently overseen the creation of four separate work groups to begin the difficult tasks associated with meaningful reform of juvenile detention in Santa Clara County. The Office of the Public Defender has been named a member of each of the work groups.

The Public Defender Expungement Program provides weekly orientations for Social Services clients. The Expungement Program was established under a contract with the Social Services Agency to assist Social Services clients to clear their record, thereby enhancing their chance to secure employment. The Office of the Public Defender continues to work with local schools on mock trial teams and D.U.I. cases. Deputy Public Defenders and other staff continue to represent the Office of the Public Defender as they lecture at CPDA programs around the state and at local schools and colleges.

Four current and former members of this office have served as president of the County Bar Association. OPD lawyers sit on various Bar committees and volunteer their time to Bar projects. For example, OPD provides speakers for various Bar, community and school programs, and last year eight OPD lawyers helped coach a local high school mock trial team that reached the national finals in Omaha.

Technology

All paid employees of the office have individual networked computers. Some interns and other volunteers have their own computers and workspaces, based on availability, and there are always six “shared” workstations available: four in the library and two on the main floor.

All attorneys and three, paid research clerks have Lexis “California Enhanced” accounts, and the research team attorneys have full, unlimited Lexis subscriptions.⁶⁷ The office has a regularly updated database, called ISYS, which contains motions, handouts, manuals, forms, and other documents of interest to the attorneys. The office provides a weekly Caselaw Update to all attorneys. This Caselaw Update summarizes California criminal appellate court opinions, and federal opinions of interest.

For the attorneys, the office also provides a number of other computer-based legal research programs, including Crimetime, Forecite, and CALJIC Selector. Crimetime is a program that calculates a client’s potential sentence, allows the attorney to evaluate the possible options, gives collateral consequences of pleas and helps attorneys to prepare presentence sentencing reports and motions. Forecite is a criminal defense jury instruction program to help attorneys identify and create instructions, identify lesser-included offenses and issues relating to jury instructions that should be litigated. California has state approved jury instructions for criminal cases. These instructions are called CALJIC instructions. The CALJIC Selector is a program that includes all the CALJIC instructions and notes. An attorney can create individualized instruction packets for various cases, and can create pinpoint instructions within the program.

In addition to its electronic resources, the OPD also has an excellent California criminal law library, with volumes of books. The library also includes collected materials on various topics, including transcripts of various types of expert testimony,

⁶⁷ The California Enhanced Lexis package includes statutes, caselaw, Shepard’s, and numerous treatises, including all California Witkins and Matthew Bender’s Authority.

and local gang information. The office also has a video library consisting of videotapes of various in-house trainings, and CPDA videotaped training programs. All staff can use the library, and books and videos may be borrowed.

Chapter IV Conclusions

National Defender Leadership Institute (NDLI) is an initiative of the NLADA that offers a series of innovative training programs for public defenders with the goal of improving managerial and leadership skills. NDLI supports new leadership initiatives by defenders who seek to build stronger community support, establish a national network of defender leaders, improve communications strategies, and strengthen the role of defenders throughout state and local criminal justice systems.

In recognition of the 40th anniversary of the *Gideon* decision, in 2003 NDLI issued the Gideon Leadership Award of Excellence in recognition of contributions to the field of indigent defense management and leadership. Mr. Jose Villarreal received the Gideon Award in June of this year, for his leadership and innovation in the field of indigent defense. This report is additional evidence that the recognition was well deserved.

APPENDIX A: Evaluation Protocol

***Santa Clara County Public Defender Office
Site Assessment***

Request for Background Materials & Self Assessment Form

A. Background Materials

The following documentation should be provided at least two weeks before the site visit:

1. Detailed Public Defender Budgets for FY 2000, FY2001 and FY 2002;
2. Detailed Budgets for all other Criminal Justice Agencies for FY 2000, FY 2001 and FY 2002;
3. List of case-types for which public defender provides representation;
4. List of number and type of courts for which public defenders provide staffing;
5. List of all staff, by position and title;
6. Caseload Statistics for a similar time period (2000-2002):
 - a. New assignments by case-type by attorney;
 - b. Dispositions by case-type by attorney (by disposition type);
 - c. Number of withdrawals due to conflict of interest or retaining private counsel;
 - d. Trial rates (by case-type);
 - e. Indigency Rates (PDO caseload/Total Court Caseload)
7. Personnel Policy and Procedure Manuals;
8. Staff turnover rate by position over the past three years;
9. Performance Evaluation form;
10. Training Manuals;
11. Written Standards (“Standards” is used broadly, to include purely voluntary standards, standards which are enforceable by any means including being tied to funding, and those which are mandated in a statute and thus not technically “standards” at all – an example in the area of independence would be a statute establishing an independent indigent defense oversight board to whom the public defender reports):
 - a. Performance Standards including those related to vertical representation, timeliness of appointment and confidential meeting w/ clients;
 - b. Independence Standards (for Chief and/or individual attorney);
 - c. Parity of Resource Standards;
 - d. Attorney Qualification Standards; and,
 - e. Workload/Caseload Standards;
 - f. Conflict of Interest Standards;
12. Written descriptions of the intake function (who screens clients, etc.); and,

13. A description of any criminal justice case-tracking systems, including a list of data fields that are tracked by the program.

B. Self-Assessment

Section 1: The ABA's 10 Principles

In February of 2002, The American Bar Association adopted *Ten Principles of a Public Defense Delivery System*, which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”⁶⁸ The purpose of the *Principles* is to distill the existing voluminous national standards pertaining to indigent defense systems down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply. The *Principles* provide a concise reference point for discussion of the ten areas of indigent defense standards investigated in this self-assessment form. NLADA requests that you self-assess your program against these ten principles listed below:

Principle 1: *The public defense function, including the selection, funding, and payment of defense counsel,⁶⁹ is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.⁷⁰ To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.⁷¹ Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of*

⁶⁸ www.abanet.org/legalservices/downloads/sclaid/10principles.pdf. The *Ten Principles* are based on a paper by H. Scott Wallace, NLADA Director of Defender Legal Services, and James Neuhard, State Appellate Defender of Michigan and former NLADA President, published in December 2000 by the Office of Justice Programs, U.S. Department of Justice, in the *Compendium of Standards for Indigent Defense Systems* (hereinafter “OJP Compendium”) (www.ojp.usdoj.gov/indigentdefense/compendium/). Both versions are densely footnoted with references to all national standards issued over the previous three decades providing support for the black-letter principles stated.

⁶⁹ “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

⁷⁰ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1 (D).

⁷¹ NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, Standards 3.2.1, 2; Contracting, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter “ABA Monitoring”], Standard 3.2.

furthering the independence of public defense.⁷² The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.⁷³

- a. Do you have clear, written standards (or statutory provisions) regulating the independence of the system generally, and the hiring/firing of the Chief position specifically? Explain.
- b. Describe the selection process for the Chief Public Defender position.
- c. Does the current standard (if any) do enough to protect the chief public defender, staff attorneys and the organization in terms of undue political or judicial interference (why or why not)?
- d. What changes (if any) in the current standard would further protect you and your attorneys from undue influence?
- e. If the standard is breached, what recourse (if any) do you employ?
- f. Have you ever sought to challenge an encroachment on your independence? (What was the outcome)
- g. Are your attorneys assigned to specific courtrooms such that they always practice in front of the same judge?
- h. Do the office's hiring practices afford the Chief Defender adequate independence in the recruitment and retention of staff? Please explain
- i. How do you actively encourage diversity in the hiring process?

Principle 2: *Where the caseload is sufficiently high,⁷⁴ the public defense delivery system consists of both a defender office⁷⁵ and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services.⁷⁶ The appointment process should never be ad hoc,⁷⁷ but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.⁷⁸ Since the responsibility to provide defense services rests with the state,*

⁷² Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

⁷³ ABA, Standard 5-4.1

⁷⁴ “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase can generally be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases is enough to support meaningful involvement of the private bar.

⁷⁵ NAC, Standard 13.5; ABA, Standard 5-1.2; ABA Counsel for Private Parties, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

⁷⁶ ABA, Standard 5-1.2(a) and (b); NSC, Guideline 2.3; ABA, Standard 5-2.1.

⁷⁷ NSC, Guideline 2.3; ABA, Standard 5-2.1.

⁷⁸ ABA, Standard 5-2.1 and commentary; Assigned Counsel, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

*there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.*⁷⁹

- a. Does your office have a clear, written policy on conflicts of interest?
- b. Describe the manner of conflict of interest defense representation in your jurisdiction.
- c. Does the conflict system handle other cases besides conflict of interest?
- d. Does the conflict system handle any types of cases that are not handled by your office?
- e. What proportion of indigent criminal cases overall are handled by the private bar (whether on case-by-case appointment or by contract)?
- f. If appointed private counsel are used:
Is there a coordinated plan directed by a full-time administrator who is responsible for matters such as maintaining lists of qualified attorneys, overseeing payments, and providing for training? Or are appointments unregulated and ad hoc by the judge?
- g. Describe any state funding that your office receives.
- h. Is your office part of a statewide system?

Principle 3: *Clients are screened for eligibility,⁸⁰ and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request,⁸¹ and usually within 24 hours thereafter.⁸²*

- a. What agency is responsible for indigency screening?
- b. Are the eligibility criteria adequate to allow all people unable to afford private counsel access to a public defender?
- c. If the criteria are "adequate," is it because measurable empirical criteria are actually applied, with some form of investigation or verification, or because the appointment of counsel is presumptive, upon no or perfunctory inquiry?
- d. Are the eligibility criteria applied equally to all potential clients regardless of whether they are in-custody or out-of-custody?
- e. Are people marginally above the eligibility criteria offered access to counsel at reduced rates?
- f. Is verification-of-eligibility information provided by clients (please explain)?
- g. What is the procedure if a client's ability to retain private counsel has changed during a case?
- h. What recourse does a client have to appeal an eligibility decision?
- i. Does your jurisdiction attempt to recoup public defender costs from eligible clients? (If "Yes," please describe).

⁷⁹ NSC, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

⁸⁰ For screening approaches, see NSC, Guideline 1.6 and ABA, Standard 5-7.3.

⁸¹ NAC, Standard 13.3; ABA, Standard 5-6.1; Model Act § 3; NSC, Guidelines 1.2-1.4; ABA Counsel for Private Parties, Standard 2.4 (A).

⁸² NSC, Guideline 1.3.

- j. How is compliance with recoupment efforts enforced (civil contempt of court, criminal contempt)?
- k. Do clients ever get remanded to jail for failure to pay?
- l. If “yes,” do clients have access to attorneys during the compliance?
- m. Please provide data indicating the rate and amount collected in recoupment fees over the past three years (if applicable). How soon after arrest, detention or request are attorneys generally appointed to clients?
- n. Does this differ for in-custody and out-of-custody defendants?
- o. What recourse does a client have if he feels that he did not receive timely appointment of counsel?

Principle 4: *Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.*⁸³ *Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client.*⁸⁴ *To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.*⁸⁵

- a. Do attorneys meet with clients “as soon as practicable” before the preliminary examination in court?
- b. What mechanisms are in place to guarantee that attorneys meet/interview clients soon after appointment?
- c. Does your office have a clear, well-written client interview form? (Please provide copy of form)
- d. If “YES,” is it satisfactory to capture key information relating to potential release on bond, e.g., regarding client’s housing situation, family, employment, etc.?
- e. At what point does the initial interview generally occur?
- f. Are interviews conducted by attorneys?
- g. What percentage of your clientele is detained prior to the initial court appearance?
- h. Do you have sufficient confidential meeting space at your office, in court and at the jail? (Please describe)
- i. Generally, how much time is spent with a client prior to preliminary hearing?
- j. Is this the same for both in-custody and out-of-custody clients?

Principle 5: *Defense counsel’s workload is controlled to permit the rendering of quality representation. Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above*

⁸³ American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, Standard 4.2.

⁸⁴ NSC, Guideline 5.10; ABA Defense Function, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, Guideline 2.2.

⁸⁵ ABA Defense Function, Standard 4-3.1.

such levels.⁸⁶ *National caseload standards should in no event be exceeded,⁸⁷ but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.⁸⁸*

- a. Do you have a clear written policy or standard on workload?
- b. Is it framed in terms of *caseload* (numbers of cases of different types, e.g., felonies, misdemeanors, juvenile, appeals) or *workload* (e.g., units of work more finely differentiated or “weighted,” e.g., plea versus trial, Class A felony versus Class B)?
- c. Is it regularly adhered to?
- d. Are the national standards exceeded? (see footnote 20 below)
- e. How do you track caseload/workload such that attorney workload can be objectively assessed?
- f. How frequently is attorney workload checked for compliance with the standard?
- g. What recourse does an individual attorney have if she feels her workload is above that required by the standard?
- h. What recourse does your office have should non-compliance with the workload standard become a systemic issue?
- i. Have you ever had to seek caseload/workload relief? (Describe)
- j. Does the workload standard take into account for attorney experience-level and/or severity of the case?
- k. If “no,” how are these issues addressed internally?
- l. Is the public defender budget based, in part, on a formula that takes into account the caseload/workload standard?
- m. Has any increase/decrease in caseload been match by a corresponding increase/decrease in public defender attorney staffing?

Principle 6: *Defense counsel’s ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.*⁸⁹

⁸⁶ NSC, Guideline 5.1, 5.3; ABA, Standards 5-5.3; ABA Defense Function, Standard 4-1.3(e); NAC, Standard 13.12; Contracting, Guidelines III-6, III-12; Assigned Counsel, Standards 4.1.4.1.2; ABA Counsel for Private Parties, Standard 2.2 (B) (iv).

⁸⁷ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (NLADA, 1988; ABA, 1989) [hereinafter “Death Penalty”].

⁸⁸ ABA, Standard 5-5.3; NSC, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980), Standard 1-F.

⁸⁹ Performance Guidelines, Guidelines 1.2, 1.3(a); Death Penalty, Guideline 5.1.

- a. Are attorney qualification requirements used to match attorneys to the complexity of the case?
- b. What happens if attorney qualification standards are not met? What options does an individual attorney have? What options does the office have?
- c. What case-tracking or other mechanisms are in place to document compliance?
- d. Is attorney qualification weighed during the hiring process?
- e. Is training utilized to ensure proper qualification requirements are met before assignment of cases? (Please describe)

Principle 7: *The same attorney continuously represents the client until completion of the case.* Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing.⁹⁰ The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

- a. Does your office practice vertical representation in all instances and case-types or are there institutional shifts in which a staff public defender handles all cases on a docket?
- b. Describe how direct appeals are handled.

Principle 8: *There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.* There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.⁹¹ Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.⁹² Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases,⁹³ and separately fund expert, investigative and other litigation support services.⁹⁴ No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner

⁹⁰ NSC, Guidelines 5.11, 5.12; ABA, Standard 5-6.2; NAC, Standard 13.1; Assigned Counsel, Standard 2.6; Contracting, Guidelines III-12, III-23; ABA Counsel for Private Parties, Standard 2.4 (B) (i).

⁹¹ NSC, Guideline 3.4; ABA, Standards 5-4.1, 5-4.3; Contracting, Guideline III-10; Assigned Counsel, Standard 4.7.1; Appellate; ABA Counsel for Private Parties, Standard 2.1 (B) (iv). See NSC, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

⁹² ABA, Standard 5-2.4; Assigned Counsel, Standard 4.7.3.

⁹³ NSC, Guideline 2.6; ABA, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, Guidelines III-6, III-12, and *passim*.

⁹⁴ ABA, Standard 5-3.3(b)(x); Contracting, Guidelines III-8, III-9.

in improving the justice system.⁹⁵ This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

- a. How do your staff salaries compare with salaries of similar positions in the prosecutor's office?
- b. How does your staff size compare with the staff size of the prosecutor?
- c. How does your workload compare with the workload of the prosecutor's office?
- d. Is there parity in other areas mentioned in Principle 8, such as non-attorney staffing, benefits, technology, physical facilities, and access to legal research)?
- e. Is there parity of "off-budget" resources, such as access to grant funds, forensic services, experts or investigative services? (If "NO," please describe)
- f. Is there any sort of parity formula in effect?
- g. Is it adequate?
- h. Are assigned counsel paid a reasonable fee in addition to actual overhead and expenses?
- i. Is low-bid or flat-fee contracting used?
- j. If contracting is used, are the funds for expert, investigative and other litigation support expenses kept separate from the funds for the core legal representation services?
- k. Is there a mechanism in place to ensure that defender resources are expanded when other parts of the system are increased, such as additional criminal court judges, prosecutors or police?
- l. Are indigent defense representatives included as equal participants in efforts to improve the criminal justice system, such as a criminal justice coordinating council or the development of a specialty court?

Principle 9: *Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.*⁹⁶

- a. What are the CLE requirements for your jurisdiction?
- b. If there is no mandatory CLE, is training otherwise required for indigent defense attorneys? If so, by what authority is that requirement imposed? How is it enforced?
- c. Do you offer in-house CLE training?
- d. Do you offer in-house training in areas specific to the practice of indigent defense (that is not required CLE)?
- e. What external training options are available to PDO attorneys?

⁹⁵ ABA Defense Function, Standard 4-1.2(d).

⁹⁶ NAC, Standards 13.15, 13.16; NSC, Guidelines 2.4(4), 5.6-5.8; ABA, Standards 5-1.5; Model Act, § 10(e); Contracting, Guideline III-17; Assigned Counsel, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, Standard 2.1 (A).

- f. Is this training equally available for all PDO attorneys?
- g. Are different types of training made available to attorneys correlated to their different areas of practice?
- h. Does the office have a separate budget line for such training?
- f. Does the office have discretion into how the training budget is allocated?
- g. Does the office need county/state approval for external training?
- h. Does the office need county/state approval for out-of-state travel for training?
- i. Describe the increase/decrease in the training budget over the past five years.
- j. Is professional development training offered to non-attorney staff? What type?
- k. Overall, how does training in your indigent defense program compare to training for prosecutors in your jurisdiction?

Principle 10: *Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.*⁹⁷

- a. Does your office have clear, written performance guidelines (such as NLADA's *Performance Guidelines for Criminal Defense Representation*)? (Please provide copy of policies)
- b. If "YES," Are staff attorneys directed that compliance with the guidelines is mandatory?
- c. Are the guidelines used by supervisors in a process of systematic review and evaluation of attorneys' performance for purposes of promotion and pay increase?
- d. Do clients feel that they are receiving zealous representation?
- e. Do you seek to divert your clients from adjudication after exploring whether it is in their best interests?
- f. Does your office actively seek alternative sentences for clients if it is in their best interests?
- g. Would you consider the office representation to be zealous in cases that go to trial? (explain)
- h. Do attorneys generally keep thorough and accurate case files?
- i. Are case files maintained such that another attorney could take over or review cases with minimal difficulty?
- j. Do managers regularly spot check case files for accuracy and thoroughness?
- k. Are attorneys afforded sufficient time to regularly keep abreast of professional developments in their field that pertains to the representation afforded clients?

⁹⁷ NSC, Guidelines 5.4, 5.5; Contracting, Guidelines III-16; Assigned Counsel, Standard 4.4; ABA Counsel for Private Parties, Standards 2.1 (A), 2.2; ABA Monitoring, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

Section 2: Best Practices

Though the *ABA Ten Principles* establish the fundamental threshold for effective and efficient indigent defense representation, there are many innovative policies and programs that have been established in indigent defense systems across the country that are nationally regarded as necessary “best practices” to ensure high quality services to those of insufficient means. This section seeks to establish the degree to which the indigent defense organization seeks to broaden the traditional definition of what it means to be a public defender.

1. Community Relations

- a. Is your office(s) located in areas easily accessible to your client base?
- b. How do you inform the community of the services afforded by your office?
- c. Do you know the key community leaders in your community?
- d. Do you maintain an ongoing relationship with community organizations that promotes information sharing?
- e. Do you initiate activities that involve your office with the community?
- f. Do you provide appropriate written information to the community concerning the activities of your office?
- g. Does your office respond to requests from the community for information?
- h. Do you maintain comprehensive, up-to-date reference material on all available community resources?
- i. Do representatives of your office regularly provide public education on the role of your office in the criminal justice system?
- j. Please describe community outreach activities and/or community interactions the office has been involved in over the past six months.

2. Criminal Justice Policy Participation

- a. Do you actively work with other segments of the criminal justice system to improve the quality of the administration of justice?
- b. Is your office regularly asked to participate in criminal justice policy decisions?
- c. Are you actively promoting the proper functioning of institutional performance where it affects your client’s best interests?
- d. Do you promote an understanding among the private bar and other criminal justice representatives on the role of your office?
- e. Do you litigate on behalf of your clients should the policies of another criminal justice agency (police, prosecution, courts, corrections) infringe on the rights of your clients? Please explain:

3. Supervision & Performance Evaluations

- a. Does your office have clear, written personnel policies and/or an employee manual that delineates what is expected of personnel?
- b. If “YES,” are the office policies regularly adhered to?

- c. Is your personnel manual comprehensive?
- d. Does staff participate in this policy review?
- e. Do you have regular performance evaluations?
- f. Does staff actively participate in the review process?
- g. Is there an adequate grievance procedure for a poor review?
- h. Does your office seek periodic feedback from judges, prosecutors and other criminal justice representatives during performance reviews?

4. Overall Office Practices

- a. Does the office have an overall appearance of professionalism and are common areas well maintained?
- b. Does every attorney have her own computer?
- c. Does every support staff have a computer?
- d. Do attorneys have access to electronic case research via Internet or CD-Rom?
- e. Do attorneys have access to criminal histories on-line?
- f. Does the office have a brief bank or motion bank?
- g. If “YES,” is it routinely updated?
- h. Do you routinely have staff meetings on a regular schedule?
- i. Do attorneys and support staff work in teams?
- j. Does your office have a media-relations point person?
- k. If “NO,” does the office have a policy on how to handle inquiries from the press? (Please provide a copy of policy)
- l. Do attorney and support staff have a voice in policy-making decisions?
- m. Please describe any other policies and practices you believe distinguish your organization from other public defender agencies.

Appendix B: Staff Survey Analysis

	Admin.	Clerical	Investigator	Legal Secretary	Supervising Attorney	Paralegal	Trial Attorney	Total	
1	The mission of the Public Defenders' Office (SCCPD) is clear to me.	5.00	4.75	4.92	5.00	5.00	4.88	4.95	4.92
2	The SCCPD has an organizational philosophy by which it accomplishes its mission	4.60	4.75	4.46	4.67	4.86	4.00	4.58	4.56
3	SCCPD staff members are "on their own," in terms of organizational philosophy.	2.25	3.36	2.25	3.00	1.57	2.75	2.49	2.52
4	I support the philosophy with which the SCCPD mission is accomplished.	4.60	4.83	4.54	4.67	4.86	4.71	4.80	4.75
5	The SCCPD is accomplishing its mission.	4.80	4.58	4.54	4.33	4.71	4.57	4.61	4.60
6	The SCCPD management's priorities are consistent with the SCCPD mission.	4.80	4.58	4.08	4.00	4.43	4.00	4.23	4.28
7	The SCCPD has clear performance standards for carrying out its mission.	4.60	4.50	4.00	3.33	4.14	3.71	4.18	4.15
8	The SCCPD is responsive to the recipients of its services.	4.60	4.75	4.23	4.00	4.71	4.57	4.61	4.56
9	The SCCPD's philosophy is consistent with its mission.	4.60	4.67	4.50	4.33	4.71	4.57	4.73	4.66
10	The SCCPD has a well-defined plan for accomplishing its mission.	4.40	4.50	4.00	4.00	4.57	4.14	4.46	4.36
11	Santa Clara County supports the mission of the SCCPD.	4.50	4.27	3.15	3.00	4.43	3.14	5.18	4.41
12	My co-workers are properly qualified for their positions.	4.80	4.30	3.85	3.00	4.43	3.50	4.45	4.23
13	I am afraid to make mistakes at the SCCPD for fear of the consequences.	1.50	2.42	2.85	2.67	1.57	1.75	2.07	2.16
14	My compensation is about equivalent to others who do the same kind of work.	4.00	4.00	4.15	2.33	3.43	3.00	3.84	3.74
15	My supervisor makes a point of letting me know about my performance.	4.40	3.25	3.85	3.00	4.29	2.25	3.90	3.70
16	I get enough feedback to know if I'm performing up to the SCCPD's expectations.	4.60	3.30	4.08	3.67	4.57	2.50	4.71	4.20
17	I receive regular formal performance reviews by my supervisor.	4.60	1.70	2.23	3.00	4.57	1.38	3.63	3.09
18	My formal performance review is a worthwhile experience.	4.60	3.67	2.78	3.00	3.43	2.00	3.64	3.45
19	I understand the criteria used by my supervisor in evaluating my performance.	4.60	3.00	3.55	3.00	4.57	2.00	4.08	3.84
20	The evaluation of my work performance is based on pre-determined criteria.	4.60	2.50	4.00	3.00	4.14	3.00	4.08	3.91
21	SCCPD staff members are open and honest with one another.	4.40	4.08	3.54	3.33	4.14	3.29	4.31	4.04
22	I understand the criteria for promotion.	4.75	4.09	3.92	3.00	4.43	3.50	4.15	4.07
23	The criteria for promotion are appropriate for the SCCPD organization.	4.50	4.10	3.62	4.00	4.43	3.29	3.90	3.90
24	Promotions are based on the promotional criteria.	4.50	3.80	3.69	4.00	4.14	3.57	3.81	3.83
25	The SCCPD is respected in the Criminal Justice System.	4.60	4.33	2.85	3.67	4.71	3.38	4.68	4.21
26	The SCCPD is respected in the Community.	4.00	4.17	2.77	3.00	4.00	2.86	3.80	3.62
27	I am proud to say that I work for SCCPD.	4.60	4.75	4.69	4.67	4.43	4.86	4.98	4.82
28	My supervisor treats me with respect.	5.00	4.67	4.85	5.00	4.57	4.38	4.93	4.81
29	Managers and supervisors have the skills necessary for their jobs.	4.60	3.83	4.38	3.50	4.29	4.43	4.05	4.14
30	Most staff members are willing to do more than their job requires.	4.20	4.00	3.69	3.33	4.43	3.83	4.24	4.08
31	My workload is appropriate.	4.80	4.50	4.15	3.67	4.57	4.50	4.39	4.39
32	Management does a good job of matching job assignments with people's abilities.	4.60	3.83	3.54	3.00	3.86	3.57	4.03	3.88
33	Staff assignments are rotated in a way that enhances organizational effectiveness.	4.60	3.50	3.15	4.00	4.43	3.33	3.95	3.81
34	People stay in the same job assignment too long.	2.20	3.40	2.92	2.50	1.86	2.71	2.34	2.54
35	SCCPD management's decisions take into account the needs of the SCCPD staff.	4.20	3.92	3.33	4.00	4.14	3.17	4.18	3.94
36	SCCPD management's decisions take into account the needs of the clients.	4.60	4.50	4.08	4.33	4.14	4.00	4.40	4.32
37	SCCPD management's decisions take into account the needs of the Court	4.20	4.42	4.00	4.33	3.43	3.00	3.88	3.93
38	My job makes good use of my skills and abilities.	5.00	4.33	4.54	4.33	4.71	4.13	4.80	4.63
39	Everyone who does the kind of work I do share equitably in the workload that I do.	4.67	4.10	2.90	3.00	4.43	2.86	3.88	3.74
40	I am encouraged to do high quality work.	4.80	4.42	4.31	4.00	4.57	4.29	4.86	4.63
41	My direct supervisor is helpful to me in accomplishing my daily tasks.	4.20	4.25	4.08	3.67	4.00	3.00	4.34	4.13
42	Different Divisions cooperate with each other to get the job done.	4.60	4.33	3.62	4.00	4.57	4.29	4.45	4.30
43	The SCCPD makes an effort to improve its productivity.	4.40	4.58	3.62	4.00	4.57	3.86	4.28	4.21
44	Enhancing productivity is important for the SCCPD's future.	4.80	4.58	4.75	4.33	4.43	4.43	4.08	4.35
45	Paperwork is a necessary part of my job.	4.60	4.67	4.85	4.33	4.71	4.75	4.63	4.67
46	SCCPD cases are processed in an efficient manner.	4.60	4.25	3.46	3.33	4.57	4.14	4.27	4.15
47	SCCPD's official policies and procedures are followed and applied.	4.60	4.33	3.62	3.67	4.43	4.00	4.03	4.06

	Admin.	Clerical	Investigator	Legal Secretary	Supervising Attorney	Paralegal	Trial Attorney	Total
48	4.75	3.30	3.92	3.50	4.14	3.29	3.44	3.61
49	4.20	4.09	3.15	4.00	4.57	3.67	4.05	3.94
50	4.80	4.17	4.15	4.00	4.57	3.50	4.73	4.43
51	4.40	4.00	4.23	3.67	4.43	3.75	4.59	4.33
52	4.60	4.25	4.46	4.33	4.29	4.13	4.00	4.18
53	4.40	3.92	4.00	3.67	4.86	3.75	4.49	4.27
54	4.60	4.00	4.62	4.50	4.71	3.43	4.71	4.49
55	4.40	4.18	3.23	4.00	4.57	2.88	3.88	3.82
56	4.40	4.08	3.46	4.33	4.29	3.43	3.71	3.81
57	4.60	3.92	3.62	3.67	4.43	3.38	4.00	3.93
58	5.00	3.92	4.00	4.33	4.43	4.38	4.31	4.27
59	3.50	3.38	3.85	2.67	3.57	3.75	3.51	3.55
60	4.60	4.17	3.46	3.67	4.00	3.75	3.83	3.87
61	4.60	4.00	3.92	4.33	4.71	3.88	4.15	4.15
62	5.00	4.33	4.69	4.67	4.71	4.38	4.93	4.74
63	5.00	4.33	4.50	4.00	4.57	4.00	4.43	4.43
64	4.60	4.42	3.77	4.33	4.14	4.25	4.00	4.10
65	4.60	4.42	4.15	4.33	4.57	4.38	4.61	4.48
66	4.60	3.92	4.23	3.67	4.29	3.63	4.56	4.29
67	4.40	3.67	3.69	3.50	4.14	3.38	4.10	3.92
68	2.75	3.33	4.40	3.00	3.43	4.00	3.10	3.38
69	2.80	4.78	3.45	3.00	4.14	4.00	3.35	3.62
70	4.00	3.00	3.18	3.50	2.71	2.29	3.29	3.14
71	4.40	4.73	3.85	3.67	4.29	3.71	5.54	4.80
72	4.40	4.42	3.08	4.50	4.43	3.86	4.55	4.23
73	4.60	4.33	3.77	5.00	4.71	4.38	4.61	4.44
74	4.60	4.00	3.23	4.00	4.71	4.00	4.30	4.11
75	4.60	4.08	4.54	4.33	5.00	5.00	4.95	4.74